The relationship between law, religion and morality in the light of current Hungarian law, from the perspective of legal philosophy and legal history

PhD thesis proposal

dr. Károly József Zámbó

Supervisor:

Dr. habil. Nándor Máté Birher, PhD

university full professor

Doctoral School of Law and Political Sciences of the Pázmány Péter Catholic University

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<u>Introduction</u>

Exploring the notion of norms, we can distinguish between behavioural and social norms.[1] The term norm means measure, the literal meaning of the original Latin word is mason's line. In the broadest sense, it means the tool of measuring some quantity or measurable unit, or the ability of measuring it. At the same time, the meaning also implies a prescription, a rule, a pattern. The latter meaning is already closer to the one based on which the term "social norms" is used. "Social norms" mean behavioural expectations. If we were to use the word norm only in the sense to indicate the creation of a certain product, which is the end result of a work process, then the only thing that would matter is the required quantity and quality of the product which should be created in a suitable time. "Norm creation" or "norm production" refers to the activity of measuring in advance how much time is required to create a given amount of product. However, these are not social norms, as the worker's behaviour is judged from only one point of view, namely from the point of view of the finished product.

Social norms are much more comprehensive than this. Whatever we do or avoid to do, we are subject to a multitude of norms. By behaving or not behaving in a certain way, we follow or do not follow numerous norms. The multiplicity of existing norms affecting the subject requires that there should be points of orientation. There are three such points of orientation: who issued the norm; who created an expectation or regulation; who you expect from and what you expect. This can also be expressed as there is an authority behind the norm: the authority of the person whose expectation is expressed by the norm. The classic phrasing of the trinity of normative orders approaches the issue of norms in this sense. The trinity of Ius, Fas, Mos, i.e. the distinction between legal, religious and moral norms, reflects a classical approach. It can be considered classical because it has ancient historical foundations, just like classical architecture, with its colonnades and tympanums, it implies an attempt to revive ancient, antique traditions.

If we rely on this classical way of thinking, according to the classical approach of legal theory related to norms, we can identify three main norms: legal, religious and moral norms. (Ius, Fas, Mos)

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[1] Szabó Miklós: Jogi alapfogalmak, Bíbor Kiadó, Miskolc, 2003. 11.

There are also other approaches to normative systems. Those authors who think differently from the classical legal theoretical foundations outlined above, usually list other normative orders and normative systems in addition to legal, religious and moral norms. In this sense, they consider fashion and decorum to be independent norms. At the same time, they often do not acknowledge the identity of the religious normative order as equal to others.[2]

The idea that fashion and decorum should be added to legal and moral normative systems is essentially based on the differentiation of normative systems. The fact that there is a way of thinking about norms that also considers certain normative orders to be fundamental, which other norms-related thinking does not necessarily accept as equal, indicates that behind the different thinking structures there are different views of the basic concepts related to normative orders and systems. The threefold structure of law, religion, and morality is based on what kind of authority is behind the normative order or system. In the set of arguments of my thesis the identification of the three main normative orders is based on whose authority is behind them, or more specifically, who dictates the given norm. [3]

The nature of the authority behind the normative systems is closely related to one important aspect of separating the normative systems from each other, that is, what are the consequences of the norm violation, and in what way and by whom the consequence of the norm violation is implemented. The development of Roman law is a good example of the separation of norm systems, based on the differences in the sanctioning of norm violations. In this sense, the magisterial measures applied against violators of "mos" differed from the sanctions imposed during legal proceedings against violators of legal norms.[4]

The sanction for dishonour (infamia) in the era of the Roman Republic was that the consul deleted the dishonoured person from the list of candidates for magistrate. The reprimand (nota censoria) from censor was, for example, removal from the senate, exclusion from the knightly order, assignment to a poorer city district.[5]

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[2] cf. Szilágyi Péter: Jogi Alaptan, Osiris Kiadó, Budapest, 2006. 214.

[3] cf. Birher Nándor: Ius, Fas, Mos – Emergence of Norms, 11.
https://www.researchgate.net/publication/328274920_Ius_Fas_Mos_Emergence_of_Norms
(accessed on: 05.04.2019)

[4] Földi András – Hamza Gábor: A római jog története és intézményei, Nemzeti Tankönyvkiadó, Budapest, 2009. 29.

[5] Földi András – Hamza Gábor: ibid. 223.

Violation of a religious norm meant behavior that offended the gods. Therefore, the primary sanction for such behavior is the wrath of the gods.[6] At the same time, violating divine law and things that belong to divine law (res divini iuris) was forbidden. Buildings, furnishings, and statues dedicated to the gods were considered sacred (res sacra). The tomb (res religiosa) was also protected, including the grave of the slaves.[7]

Legal norms are embedded in legal systems, while religious norms are present in religious normative systems. Today, primarily the world religions constitute the systems of religious norms. The moral normative system emerges in the narrower or wider community of people who live together.

The terms "normative order" and "normative system" can be used synonymously, but it is worth explaining the difference in meaning between the two, which makes their use more accurate. When examining the relationship between law, religion, and morality, especially when we analyse their identities that exist in themselves and are also reflected in their relationship to each other, it may be more precise to use the term "normative order". However, when it comes to how legal, religious and moral norms form a system and how they manifest in each other's system, it is more appropriate to use the term "normative system". This is the reason why in my thesis I used the term "normative order" in the very first outline of the thought process, but I preferred the term "normative system" in the more detailed discussion.

Elaborating on the connection between law, religion and morality, in my thesis I examine how the legal system relates to the moral and religious normative systems. Primarily, I focus on the matter and the nature of the relationship. There was an effect and an approach that could be explored, as the influence of the normative order of religion and morality is manifested in the legal system. I did not discuss the problem of how religious and moral norms are present in the legal system, because it is obvious that the legal system includes legal norms.

The norms of the legal system, in their exact manifestations, are the representations of the legislative power of the state. The state power, which creates law and has a role of a legislative power, can

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[6] Földi András – Hamza Gábor: ibid. 28.
[7] Földi András – Hamza Gábor: ibid. 277.

force the compliance with the law. The state power that creates law is therefore also the power that enforces law. Therefore the unity of state power is behind the legal system. This also clearly shows why and in what sense the norm systems cannot be mixed. The legal system is supported by the authority of the state, and its power to create and enforce law.

The research hypothesis according to which the other two normative orders also form a normative system follows from the examination of the legal system, i.e. the normative system of legal norms. In the case of the legal normative system, the system's distincting and orientation points are represented by the state (at the same time the state is also a system-creating factor), the system-creating factor of the other two normative systems can be identified (sometimes in a more abstract form) too. In the case of the religious norms, the world religions are the system-forming factors that determine the main points of orientation. World religions refer to Divine authority, so the foundations of their normative systems can also be traced back to Divine authority. The basic experience of being addressed by God lies behind the religious normative systems of Christianity, Judaism and Islam. The divine authority behind the normative system provides the character and permanence of the norms. The protection of Divine authority is ensured due to its (unchanged) passing down from one generation to the next. However, the importance of this tradition goes beyond the framework of the religious normative system in many cases.

A typical example of the recognition of importance beyond the system of religious norms and institutions is the Christianized Roman Empire. This was indicated, among other things, by the measure that Emperor Theodosius I in February 386 prohibited the exhumation, partition, and selling of relics of martyrs.[8]

The moral normative system is linked to the community. The community can be either the narrowest: the family, or the broadest: the nation. Accordingly, the validity of the norms can be interpreted within a narrower or broader framework.

Within the normative system we can observe a specific structure of norms. Norms occupy different levels within the norm system, forming a strict hierarchical system. There are basic principles that can be formulated very briefly, even in a few words, those principles that are

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[8] Sáry Pál: Pogány birodalomból keresztény birodalom: a Római Birodalom kereszténnyé válása a Codex Theodosianus tükrében, Szent István Társulat, Budapest, 2009. 57.

valid in the whole system. At the same time, there are certain rules of action that can be called itemized norms. These two levels are necessarily connected by a logical system that determines the character of the entire normative system. In my thesis, I call this the dogmatic level, or the dogmatic middle level. These are apparently not rules of conduct in themselves, but they determine how a basic principle, a basic norm should prevail with regard to specific rules of conduct.

In my thesis, I primarily examined how the legal system relates to religious and moral norms. After a general comparison of normative orders and normative systems, I explored the areas where the notion of religion arises in the field of law, since in these cases the area regulated by law has a special relationship with religion. Such a typical area is, for example, the issue of religious education or military chaplains. I will discuss these areas in the thesis, examining how the law, with its own tools, relates to the institution associated with religion. Through these, I examined how the specific aspects of law and religion exist in harmony with each other, and how coordination takes place, as well as how this aspiration for harmony is present in legal regulations.

I will not go into the moral references of the legal norm in such detail, since these references are of a general nature. When examining the relationship with the moral norm, it must be taken into account that the moral norm is the most abstract and the least graspable of the three main norms. At the same time, it can be stated that the system of moral norms pervades our lives. It is difficult to imagine a society, or a narrower or broader community, where moral standards are completely absent. The normative order of law and religion can exist embedded in the order of moral norms. Normative orders are separated from each other based on the underlying authority of the norms, but they are interrelated through the object of the norm, the expected behaviour and the subject (from whom it is expected). In this sense, morality is present behind the law as an underlying normative order, this is the reason why we are able to refer to it. With this in mind, I examine the relationship between the legal norm and the religious and moral norms from the aspect of the legal norm.

<u>Significance of the topic</u>

My choice of topic was motivated by my personal commitment to the investigation of theological and philosophical questions. I already focused on Christian ethics during my previous studies.

Therefore, from the beginning of my legal studies, I have been interested in law and the relationship between jurisprudence and those areas that can be examined from the aspect of philosophy, theology, and church history.

In addition to personal motivations, I must mention the historical reasons that make the topic significant. Change of regime is often cited as the root of today's social structure in Hungary. I accept that this statement is correct, but I must add that the change of regime did not only mean change, but necessarily also continuity. I do not intend to make any negative or condemning statements in this regard, but I shall rely on my personal experience: namely that the change of regime was a political change in 1989/90, but at the same time the country's legal, administrative, cultural, social and economic institutions functioned continuously and without change, with the same workforce. This continuity, as I stated before, is not a negative phenomenon, as it was a necessary part of a peaceful and balanced transition.

Within the framework of the new public law, the aspects that represented the pluralistic conception of a democratic state in the good sense of meaning, with regard to religion and morality, gradually began to emerge. As a result of this process, today we have a worldview-neutral, secularized state, in which, however, precisely because of its neutrality, it is possible to abide by a value system based on Christian morals.

This historical context, 33 years after of the regime change, would in itself provide a good reason for my choice of topic. However, the events of recent years: the migration to Europe and the consequent advance of Islam, as well as the increasingly serious persecution of Christianity worldwide, made my choice even more relevant.

In connection with my choice of topic, it is important to emphasize that religion and morality are interrelated. When I chose my topic in 2018, the historical processes that are intensifying today had already begun. The events of recent years: the Covid-19 epidemic and the most recent, tragically sad incident, the Ukrainian-Russian war, raise the question of morality again. Morality and obviously Christian faith have a significant influence on the attitudes that certain communities of the society have in relation to these events. At the same time, in my thesis I do not intend to focus on current affairs, but rather examine the relationship of the legal system to religious and moral norms from a legal and philosophical point of view.

The relevance of the topic is backed up by the fact that in the scientific discourse, the importance of the relationship between law and religion and between law and morality is emphasized more and more often.[9] Furthermore, the tendency to examine the legal aspects of a social issue by taking moral and ethical aspects into account has strengthened in recent years.[10]

At the time I decided on elaborating on this topic, in the spring of 2018, this trend had already started to emerge, and I wanted to adapt to it by choosing this topic. The events of the four years that have passed since then, and the tendency represented by the scientific publications published during that time, proved the relevance of my choice.

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[9] Géza Kuminetz's collection volume provides a significant social science summary, the comprehensive work published at the end of 2018 combines legal aspects with ecclesiastical and moral theological aspects. Zoltán Turgonyi's humanistic work combines the theoretical systems of social philosophy, religious studies and ethics in line with the natural law ideas of recent years, and with this background he analyzes the European social crisis of our time and its causes, as well as looks for possible solution alternatives.
see Kuminetz Géza: Egy tomista jog- és állambölcselet vázlata II. Szent István Társukat az Apostoli Szentszék Könyvkiadója, Budapest, 2018.; Turgonyi Zoltán: Természetjogállam, Egy új erkölcsi és politikai közmegegyezés lehetséges elméleti alapjainak vázlata, Kairosz Kiadó, 2021.

[10] Here I must refer to the special issue of Glossa Iuridica, which approaches the legal aspects of the coronavirus epidemic from a moral and ethical point of view. cf. Vírus és etika (Virus and Ethics), Glossa Iuridica, special issue, Head of editorial board: Miskolczi-Bodnár Péter, editor-in-chief: Rixer Ádám, Published by Faculty of Law of the Károli Gáspár University of the Reformed Church 2021.
https://ajk.kre.hu/images/doc2021/pr/Glossa_iuridica_2021_kulonszam.pdf
(accessed on 28.09.2022)

1. The three main normative orders, law, religion and morality, can be clearly distinguished and demarcated from each other according to the authority behind them. At the same time, there is also a connection between the norms based on the object and subject of the norm. The authority of the state determines the legal norm, God's authority regulates the religious norm, while behind the moral norm there is the authority of the community. The object of the norm is the expected behaviour, and the subject is the person who is expected to follow the norm and demonstrate appropriate behaviour.

2. Within the three main normative systems, the norms are divided into three levels: principle level, dogmatic middle, or mediating level, level of itemized rules.

3. The legal system relates to religious and moral normative systems in two ways: generally and specifically. The general relation means that the law has moral foundations, as well as specific historical connections to religious normative systems. Specifically, the legal normative system relates to religious norms in such a sense that a religious area or institution can be the object of legal regulation. In the case of morality, it is a specific relation when a reference to morality is made in the legal norm.

The basic question of the first hypothesis is how the normative orders can be separated from each other and how they are related. As a part of this basic question we can think of the question that often arises: when we look at a norm as a behavioural expectation, concentrating on the expected behaviour, then on what basis can we determine whether it is a legal, religious or moral norm?

It is often cited as an example that "Thou shalt not kill!" which is the fifth of the Ten Commandments, corresponds to the legal norm that classifies murder as a crime, and necessarily matches the moral norm as well...

Normative orders are distinguished based on whose authority is behind the norm. The norm is an expectation, so there is someone who expects something from somebody. In the case of a legal norm, the legislative power of the state is behind the norm as an authority. In the case of the moral norm, the community determines the expectation, without the power and authority of the state. Belonging to the community determines the expectation of norm compliance and the possibility of sanctioning.

Recognizing the authority behind religious norms is a result of following the religion and accepting its belief system. Therefore, following a religious norm under the rule of law is closely related to the freedom of conscience as someone either accepts the doctrines of a religion or does not follow them. Grasping the Divine authority behind the religious norm can take place through the community that feels itself addressed by the Divine revelation. In this sense, the human community is the mediator and transmitter of the religious norm. Therefore, a characteristic of the religious norm is the preservation and transmission of tradition as thoroughly as possible. Therefore, among the three main normative orders, the intention to pass on the tradition as authentically as possible is the strongest in the case of the religious norm.

The second hypothesis refers to the structure of normative orders. I worked out this hypothesis in the fifth chapter of the first part of the thesis, looking for the answer what kind of relationship the legal norm has with the moral and religious norm systems in terms of norm creation.

Normative systems have a principle level. At this level, there are very briefly phrased basic norms that pervade the entire system. The basic principles of legal systems are laid down in the constitutions. These are the basic rights that must be present in the entire legal system. Moral and religious norm systems also have basic principles and a principle level. However, the basic principles are not, and cannot be enforced by themselves, but by the itemized rules.[11] Definite behavioural expectations are set out in these rules. In my dissertation, I came to the conclusion that these levels can be found in the normative systems of all three main normative orders. By dogmatic level, I mean a kind of logical order through which the basic principles are represented in the itemized rules. Therefore, I consider dogmatic level as an intermediary middle level in which the main structures of the normative system appear. The logical, structural order that affects the life of institutions and communities, and at the same time determines the pattern of expected actions and behaviours, regulates how a basic principle can exist in itemized rules. This line of thought is significant since when there is a connection, conflict, or interaction between normative systems belonging to different normative orders, it may happen that conflicting norms or norms that influence each other are not at the same level. An itemized rule may conflict with a principle. When resolving the contradictions arising from such conflicts, it is important which norm is located at which level within the given normative system.

The third hypothesis explores how moral and religious norms are included in the legal system. I deal with this question in the third part of the thesis. The general attitude of the legal system to religion and morality is a matter of historical heritage. This comes from the Christian foundations of European legal systems, and it is influenced by its historical effects. The special attitude of the legal system to religion and morality arises from the fact that the legal system includes the regulation of areas that are closely related to religion. Such is the regulation of military bishoprics, which is both regulated by the legal system of the state and at the same time it is also present in the ecclesiastical norms of the historical churches.

I assume that the legal norm's references to morality belong to the category of special relation to other normative systems.

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[11] cf. Pokol Béla Társadalomtudományi trilógia, Rejtjel Kiadó, 2008. 159

Methodology of Research

When I carried out the research for this thesis, my method was deductive, philosophical thinking. The first step was to develop a research question and then to elaborate on that. During this process I reviewed relevant literature and cited sources. To support and illustrate the pre-developed thought process, I cited and occasionally commented on the most important works and publications of various authors. Therefore, the research was not of a historical nature, which is definitely and obligatorily linked to the sources, both in the case of primary and secondary sources.

The raising and elaboration on the topic was obviously influenced by the publications of various authors, which I cited, indicating exactly which part I am referring to.

I gave lectures related to certain topics of the thesis, and then I made publications from these lectures, which I incorporated into the thesis. I had already chosen topics for these presentations that overlap a certain subfield of my thesis.

The focus of my thesis is the legal normative system, and I primarily examine the legal normative system in comparison with the religious and moral normative systems. Therefore, the methodology of the thesis is related to legal philosophy, and accordingly, most of the referred literature belongs to the field of legal philosophy and legal theory, while a smaller part belongs to the field of legal history. Compared to these, the theological and philosophical literature, which I used in my thesis, is smaller. In this sense, I would like to place my thesis in the field of jurisprudence.

List of publications related to the topic

1. A szakértői jog, és a demokratikusan megvalósítandó jog megkülönböztetése Arno Anzenbacher normarendjének értelmezésében (Birher Nándorral társszerzőként), KRE-DIT 2018/2, 2018. december 27.

2. A jogi norma szekularizációja a római jogtörténet vonatkozásában, Humán Innovációs Szemle, 2019/1. szám, 64-70.

3. A Katolikus Egyház szociális tanításának szerepe napjaink szociális jogi gondolkodásában, KRE ÁJK XVI. Jogász Doktoranduszok Országos Szakmai Találkozója, Konferencia kötet, 2020.

4. Az ember, mint a jogi, vallási, és erkölcsi normák címzettje, Jogelméleti Szemle, 2020/1. szám.

5. A személy, mint jogalany keresztény gyökerei, MTA-VEAB, az életminőség új paradigmái a 21. században, konferencia kötet, szerk. Garaczi Imre, Veszprémi Humán Tudományokért Alapítvány 2020.

6. A normák transzcendens gondolati háttere, Humán Innovációs Szemle, 2020/1. szám. 44-69.

7. Észrevételek a vallásgyakorlás járványügyi korlátozásával kapcsolatban, Vírus és etika, Glossa Iuridica 2021. VII. különszám.

8. A jogi, vallási, és erkölcsi normák összefüggése és változása korunk társadalmi változásainak fényében, Studia Wesprimiensia: Tanulmányok a teológia és a szociális munka területéről: a Veszprémi Érseki Hittudományi Főiskola folyóirata 22:1 pp. 144-152 (2021)

9. A szabadság jogi szemléletének keresztény megközelítése, In. Badacsonyi Zoltán (szerk.) Betű és Lélek: jog és jogtudomány a kereszténység nézőpontjából, Petrecz Sándor Alapítvány Kiadó 295-312 (2021)

10. A lelkiismereti és vallásszabadság megjelenése a hit és erkölcstan iskolai oktatásának szabályozásában, In. XX. Jogász doktoranduszok Konferenciája (szerk. Prof. Dr. Miskolczi-Bodnár Péter, Dékán, KRE ÁJK) Konferencia kötet, 2021.

11. A szabadság egyéni és közösségi megélésének viszonya, és a szabadság egyéni és közösségi védelme, Mediterrán Világ Társadalomtudományi Folyóirat, 51. szám, (2022) Veszprém, főszerkesztő-kiadó: Dr. habil. Garazci Imre.

12. A jogi norma összhangja az erkölcsi és a vallási normával, a normaalkotás szempontjából, Studia Wesprimiensia – tanulmányok a teológia és a szociális munka területéről: a veszprémi Hittudományi Főiskola Folyóirata, 2024. 104-136.

13. A dereguláció jogelméleti megközelítése és összehasonlítása a vallási és az erkölcsi normák megszűnésének kérdésével, XXI. Doktoranduszok Országos Szakmai Találkozója – konferencia kiadvány, KRE ÁJK, 2022.

14. Az állami és az egyházi szféra szétválasztásának fenntarthatósága a vallásszabadság és a szólásszabadság fényében, In. A Keresztény Jogakadémia „Keresztényként és jogászként a jövőbe" c. tanulmánykötet (2022).

15. A normák keletkezésének kérdése, az új normák megjelenésére vonatkozó társadalmi igény összefüggésében, KRE Állam- és Jogtudományi Doktori Iskola által szervezett XXII. Jogász Doktoranduszok Országos Konferenciája, Konferencia kiadvány (szerk. Prof. Dr. Miskolczi-Bodnár Péter, dékán) 2022.

16. Hitélet és honvédelem, KRE Állam- és Jogtudományi Doktori Iskola által szervezett XXIII. Jogász Doktoranduszok Országos Konferenciája, Konferencia Kiadvány (szerk. Prof. Dr. Miskolczi-Bodnár Péter, dékán) 2022.