

Dr. Géza Patay

**„O tempora o mores”
(Cicero)**

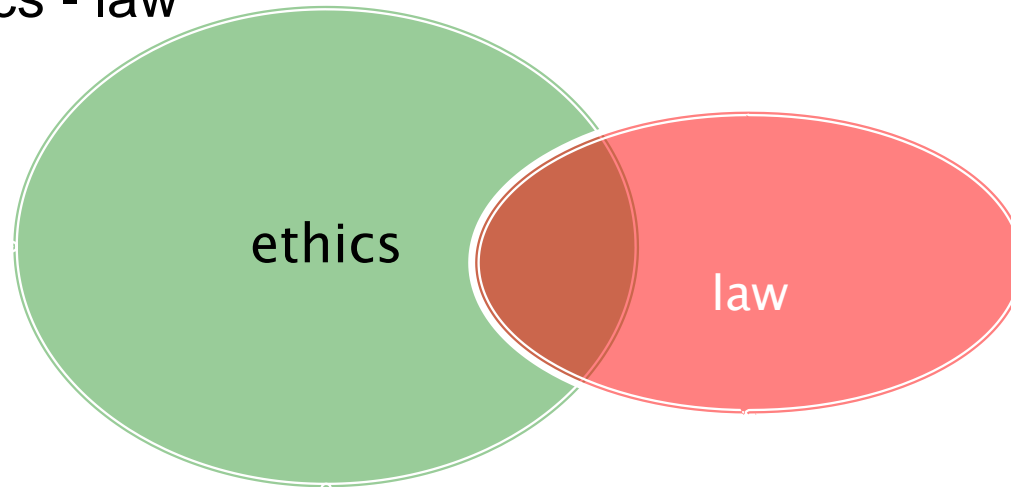
Ethics in Public Procurement?

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Ethics in Public Procurement?

Relation of ethics - law



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19th and 20th centuries: ethics were alive and supported the operation of the capitalist system

- an ethical principle on the money
the Hungarian crown (*korona*) in 1908
The official motto of the United States adopted by the Congress in 1956
- the given word carries weight
- commercial culture

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The fading of commercial ethics

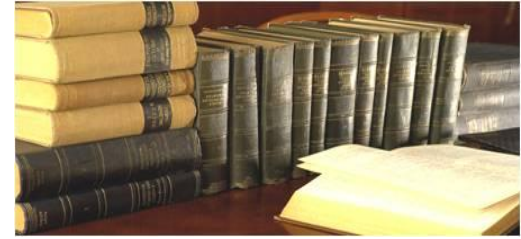


The second half – the end of the 20th century, early 21st century

- the quick fish eat the slow fish
- fading of ethical limits
- everyone has to readily adapt oneself
- a decent 'gentleman' = fall guy



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How can law react?

Requirement: the same standards should apply to everyone, ethics were faded, law remains and shall be reinforced

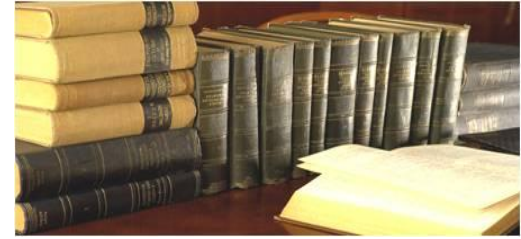
- try to close loopholes  overregulation  new loopholes
- reinforcement of principles as general clauses

First (~after 2000): closing of loopholes

Today: reinforcement of principles = reinforcement of ethical principles

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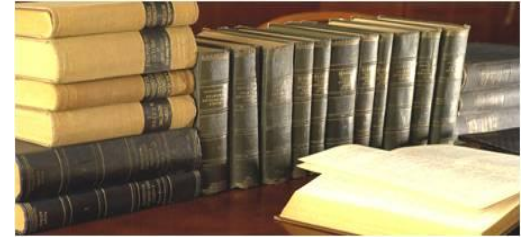
The technique used for closing loopholes

- in some areas it works
- it is appreciated by politics
- exerts a prompt effect
- generates new demand for regulation
- leads to overregulation

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The other approach



to enhance morality, to teach „mores” to economic operators

Is this a new phenomenon?

- ‘A good custom is better than any legislative act’
- ‘the entirety of civil law transactions is based on good faith and fairness’

(the explanatory memorandum to the private law bill, 1928)

-‘... In the course of the practice of law, the principle of good faith must be respected’

(Curia 7231/1930)

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What to rely on?

Competition law: 'It is forbidden to perform any economic activity ... dishonestly'

'It is forbidden to ... prejudice in any way the fairness of calling for tenders.'

Civil Code: 'In the course of exercising civil rights and fulfilling obligations, all parties shall act in the manner required by good faith and mutual respect.'

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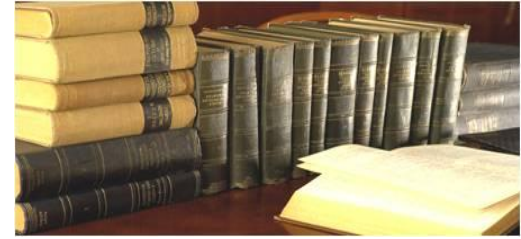
The new stipulation of the new PP,
the renaissance of 'Trau und Glauben'

Art. 2(3) of the PP Act: 'In the course of the contract award procedure, contracting authorities and economic operators shall act in good faith and in compliance with the requirements of honesty and proper practice of the law.'

According to Art. 292/B(3)(b) of the Civil Code on the basis of the requirements of honesty and fairness, the term of payment may be declared invalid, on request.

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An international outlook on the renaissance of 'Trau und Glauben'

United States

Uniform Commercial Code

Art.1.

Every contract and duty included under the umbrella of the Uniform Commercial Code imposes upon the parties thereto "an obligation of **good faith** in its performance or enforcement".

UNIDROIT model rule

Principles Art. 1.7. stipulates that: Each party must act in accordance **with good faith and fair dealing** in international trade. The parties may not exclude or limit this duty.

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The Vienna Sales Convention

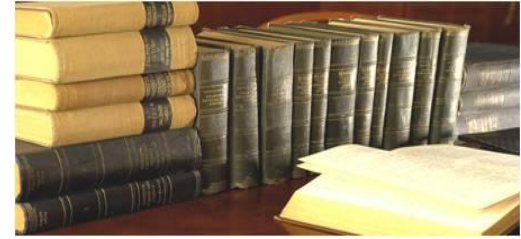
Art. 7: In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of **good faith** in international trade.

PECL (Principles of European Contract Law)

Provides for the application of the requirement of good faith and fair conduct.
(In compliance with the UNIDROIT model rules.)

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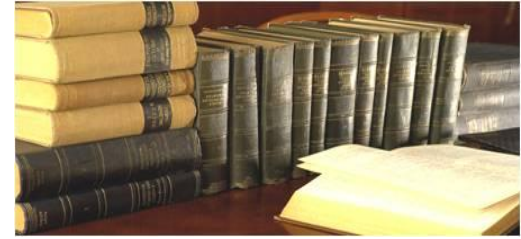


What is missing (?) :

the principle of abuse of rights

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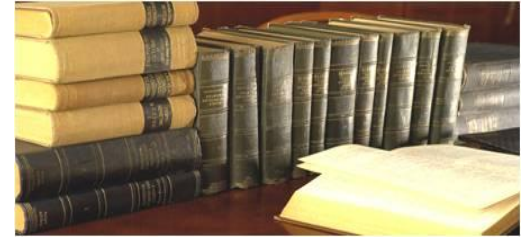
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Codes of Conduct

- Rules of professional conduct for lawyers
- Public procurement code of conduct

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Thank you for your attention!

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