

Department of Justice, Law and Society
School of Public Affairs
The American University

Spring 2005

ILS.308.001 – JUSTICE, MORALITY AND THE LAW

Wednesdays, 11:20 A.M. TO 2:00 P.M.

Ward 202

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Office hours: (by appointment)

Course Description

[From the catalogue: “Moral issues involved in administering justice in society, emphasizing the nature of human rights and the ideal of justice. Moral consequences of official control actions of lawmakers, justice system careerists, and others involved in the definition of crime and deprivation of liberty, stressing ‘moral offenses.’ Offered irregularly.”]

Morality: “Ethical wisdom, knowledge of moral science.”

Mores: “The shared habits, manners, and customs of a community or social group; *spec.* the normative conventions and attitudes embodying the fundamental moral values of a particular society, the contravention or rejection of which by individuals or subgroups is liable to be perceived as a threat to stability.”

Moral: “In early use: a person's moral qualities or endowments. Later: a person's lifestyle or self-conduct (esp. in sexual matters) considered with regard to morality; a set of personal standards relating to right and wrong conduct.”—Oxford English Dictionary

Behavior formerly considered good and bad is now “diagnosed” and “treated” by psychiatrists and members of the mental health establishment—“self-appointed engineers of the human soul,” as Robert Jay Lifton once used the term. Both are empowered by the state to enforce mental health laws. The consequences of this change in language, and the simultaneous shift in power from religious to medical bodies, is dramatic. Public health laws function in a similar way: Consider the “war” on drugs, tobacco, obesity, suicide, violence, etc. The effect of the “therapeutic state”—the union of medicine and state—on liberty and responsibility is profound. This includes social, legal, and public policies, as well as clinical policies. Innocent people are treated as if they are guilty of committing crimes, for example, involuntary commitment and court-ordered “treatment” for mental illness and addiction. Guilty people are treated as if they are innocent of committing crimes, for example, the insanity defense. Moral management masquerades as medicine and medicine, especially psychiatry, has become entangled with justice, morality, and law in new and confusing ways. The moral aspect of law and action by the state is often hidden and denied, in the name of medicine, compassion, and science.

What questions do such activities lead us to ponder? Consider the following:

- What does it mean to say that a person is a “moral” person? What are “values”? Where do they come from?
- We hear so much today about “family values.” What does this mean? Whose values?
- People say we must have an economy with a conscience. Whose conscience?

- Can a person with no values even exist? If we say that a person has no conscience, what do we mean? What is the difference between a “sociopath,” someone who is said to have “no conscience,” and, say, your family dog, who seems to experience guilt at having eaten something off the kitchen counter that he “knows” he shouldn’t have eaten—in terms of consciousness? What does it mean to be human?
- Are laws “real”? In other words, are there such “things” as laws? Or, is all law “socially constructed,” the expression of prevailing mores or morality? Who decides what is right and wrong, good and bad?
- Who “owns” your body? Do you have the “right” to put whatever substances you want into your body, just as you have a right to put whatever ideas you want into your mind?
- What does “do the right thing” mean? How should we behave and why?
- And finally, what role, if any, should the state play in dictating morality, rules of conduct, enforcing morality, via law? How is this consistent or inconsistent with the rule of law, and our understanding of freedom and responsibility, free will and determinism?

These are the kinds of questions we are going to examine together in class—and more. *Lecture and discussion format.*

Course Objectives

1. To learn about various theories of moral development, from childhood through to adulthood.
2. To understand the relationship between medicine and the state—the therapeutic state—and its evolution from a theocratic state.
3. To become aware of how the contemporary public health movement is a form of moral management masquerading as medicine.
4. To comprehend the relationship between freedom and responsibility in public and legal policy; and the relationship between the individual and the state.
5. To develop a comprehensive understanding of the moral basis of law
6. To deepen our understanding of the difference between the rule of man and the rule of law.
7. To become familiar with various concepts and criticisms of the meaning and experience of liberty.

Required Texts

1. *Four Essays on Liberty* (Oxford Paperbacks) by Isaiah Berlin, Publisher: Oxford University Press (June 1, 1969), ISBN: 0192810340, Paperback
2. *On Liberty* (Penguin Classics) by John Stuart Mill, Gertrude Himmelfarb, Publisher: Penguin Books; New Ed edition (February 1, 1975), ISBN: 0140432078, Paperback
3. *Liberty, Equality, Fraternity: And Three Brief Essays* by James Fitzjames Stephen, Richard A. Posner Paperback: 312 pages, Publisher: University of Chicago Press; Reprint edition (January, 1992) ISBN: 0226772586
4. *Law, Liberty, and Psychiatry: An Inquiry into the Social Uses of Mental Health Practices* by Thomas Szasz, Publisher: Syracuse University Press; Reprint edition (October 1, 1989) ISBN: 0815602421
5. *The Morality of Law* by Lon L. Fuller, Yale University Press, New Haven 1969, ISBN 0-300-01070-2 (paper)

Plus, articles, chapters, etc., from philosopher Herbert Fingarette's "Mapping Responsibility."

Course Requirements and Grades

Paper	20 %
Mid-term exam	30 %
Final exam	30 %
<u>Class participation</u>	<u>20%</u>
Total = 100%	

Paper: Five-page, double-spaced, typed paper dealing with any aspect of justice, morality and the law of your choice. You are encouraged to meet with Professor Schaler to discuss the topic for your paper. Guidelines for writing will be passed out in class, or sent to you by email. You will present your paper to the class.

Teaching assistant: Quinci Moody quinci_moody@yahoo.com

CLASS SCHEDULE

Date	Topic	Reading
January 12	Introduction; The therapeutic state; defining morality; moral development; what is crime?; the moral foundation of law; the relationship between freedom and responsibility; the current threats to liberty and responsibility	
January 19	Psychiatry as science; social institution; and the criminal law	LLP, ix - 148
January 26	Psychiatry and constitutional rights; and public policy	LLP, 149 to end
February 2	On Liberty	Mill, complete
February 9	Political ideas in the twentieth century Historical inevitability	Berlin I & II
February 16	Two concepts of liberty John Stuart Mill and the ends of life	Berlin III & IV
February 23	Catch-up and review	
March 2	Mid-term examination	
March 9	Spring break , no class—Reading over break	Read Fuller
March 16	The two moralities; the morality that makes law possible; the concept of law	Fuller, v to 151
March 23	The substantive aims of law; reply to critics; end	Fuller, 152 to appendix

March 30	The doctrine of liberty in general; the liberty of thought and discussion; the distinction between the temporal and spiritual power.	Posner Stephen I, II, III.
April 6	The doctrine of liberty in its application to morals; Equality; fraternity; conclusion; essays by a barrister	Stephen IV to end.
April 13	Papers due; presentations	
April 20	Paper presentations	
April 27	Review	
May 4	Final exam	11:20 A. M to 1:50 P.M.

Note: Clear and accurate writing will be taken into account in assigning grades, as well as **participation in class discussions**. Material discussed in class, or in films, and not in any of the readings, may form the basis for questions on the examinations. **Exams must be taken on the dates assigned. One grade reduction for over three class absences.** Students are responsible for anything covered in class during their absence. Readings must be completed by the session to which they are assigned. Additional readings may be assigned during the course. Students are encouraged to form study groups on their own. Grades: A-=90, B+=89, B-=80, C+=79, C-=70. **You are encouraged to have at least one meeting with Dr. Schaler to go over your work in this course.** Make appointments early. Don't wait until the end of the semester. **Check your email for class readings, announcements, etc.** Check Blackboard for announcements.

Academic Integrity Code

"Standards of academic conduct are set forth in the University's Academic Integrity Code. It is expected that all examinations, tests, written papers, and other assignments will be completed according to the standards set forth in this code. By registering, you have acknowledged your awareness of the Academic Integrity Code, and you are obliged to become familiar with your rights and responsibilities as defined by the Code. Violations of the Academic Integrity Code will not be treated lightly, and disciplinary action will be taken should such violations occur. Please see me if you have any questions about the academic violations described in the Code in general or as they relate to particular requirements for this course."