

PHIL 119
Philosophy of Law
University of California, Davis
Spring Quarter 2021

Tues/Thurs, 1:40-3:00 pm; Tues, 6:10-7:00 pm or 7:10-8:00 pm
(Remote/Synchronous)

Instructor: Dr. Tristan J. Rogers, Lecturer, Department of Philosophy
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Over 150 years ago in his celebrated essay *On Liberty*, John Stuart Mill wrote, “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.” Mill’s so-called “harm principle” is often invoked in defense of freedom of expression, the decriminalization of homosexuality, the legalization of drugs, and other matters that pit law against individual liberty. Indeed, in common parlance, to point out that certain behavior is “not harming anybody” is usually thought a sufficient justification for its toleration. But while Mill’s principle has been influential, it has never been fully realized, and its success has sometimes obscured rather than clarified the relationship between law and morality. In this course, we examine this central issue in the philosophy of law by revisiting the classic 20th century debate between Lord Patrick Devlin, a critic of Mill, and H.L.A. Hart, a defender of Mill. We’ll begin in Part One with Mill’s classic argument for the limits of society over the individual. We will also read a contemporary critic of Mill. Part Two focuses on the Hart/Devlin debate. The course concludes in Part Three with later developments and contemporary reactions to the debate.

Catalogue Description: Philosophical theories of the nature of law, legal obligation, the relation of law and morals. Problems for law involving liberty and justice: freedom of expression, privacy, rights, discrimination and fairness, responsibility, and punishment.

Required Texts:

The following texts are required. All other readings will be provided in PDF format on Canvas.

John Stuart Mill, *On Liberty* (Hackett Publishing)
Patrick Devlin, *The Enforcement of Morals* (Amagi/Liberty Fund)
H.L.A. Hart, *Law, Liberty, and Morality* (Stanford University Press)

Goals:

1. Develop competence in philosophical language and literature on the relationship between law and morality within the philosophy of law.
2. Develop written and oral communication skills as those are associated with argumentative writing and public speaking.
3. Develop close-reading and critical thinking skills in the study of philosophical texts.

Assessment:

- 5% - Participation
- 10% - Final Paper Proposal
- 15% - Weekly Review Questions
- 20% - Midterm
- 50% - Final Paper

Late Work and Attendance Policy: Generally speaking, work will not be accepted late unless merited by exceptional circumstances. You may make a written petition in advance if you feel an exception is warranted, and given the circumstances of the pandemic, most reasonable petitions will be granted. Attendance will not be taken for lectures, but attendance and participation will be noted on Tuesday evenings for your discussion sessions. All lectures will be recorded and posted to Canvas.

Course Conduct: You are expected to be respectful toward your fellow students, myself and Mr. Tamras during virtual Zoom lecture/discussion sessions. While per university policy, access to video is not required of students for Zoom sessions, it is my expectation that you will be fully present and participate where appropriate, either voluntarily or if called upon.

Plagiarism: Plagiarism is a violation of University policy and seriously undermines your integrity as a student. Penalties may be severe. It is your responsibility to understand the University's plagiarism policy.

Reasonable Accommodation: If you need accommodation because of a disability, please let me know.

Course Content Caveat: This course includes discussion of controversial and emotionally charged issues, including what are now considered antiquated attitudes about sexual morality. If you are not comfortable rationally discussing such things in a thoughtful and respectful way, I would recommend not taking the course.

Course Schedule and Due Dates

| Week | Dates | Topics | Readings |
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| PART ONE | | | |
| Week One – John Stuart Mill | Tues, Mar 30 | Introduction to the Course | None |
| | Thurs, Apr 1 | The Harm Principle | Mill, <i>On Liberty</i> , Ch. 1 |
| Week Two – John Stuart Mill | Tues, Apr 6 | Limits to the Authority of Society over the Individual | Mill, <i>On Liberty</i> , Ch. 4 |
| | Thurs, Apr 8 | Applications of the Harm Principle | Mill, <i>On Liberty</i> , Ch. 5 |

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| Week Three – James Fitzjames Stephen | Tues, Apr 13 | Critique of Mill’s Harm Principle | Stephen, <i>Liberty, Equality, and Fraternity</i> , Ch. I, pp. 1-15 (PDF) |
| | Thurs, Apr 15 | The Relation of Law and Morality | Stephen, <i>Liberty, Equality, and Fraternity</i> , Ch. IV, pp. 137-146, 158-164 (PDF) |
| PART TWO | | | |
| Week Four – Patrick Devlin | Tues, Apr 20 | Public Morality | Devlin, <i>The Enforcement of Morals</i> , Ch. I, pp. 1-10 Optional: The Wolfenden Report (PDF) |
| | Thurs, Apr 22 | The Legal Enforcement of Public Morality | Devlin, <i>The Enforcement of Morals</i> , Ch. I, pp. 11-25 |
| Week Five – Hart/Devlin Initial Exchanges | Tues, Apr 27 | Response to Devlin | Hart, “Immorality and Treason” (PDF) |
| | Thurs, Apr 29 | Democracy and Morality | Devlin, <i>The Enforcement of Morals</i> , Ch. V |
| | Sun, May 2 | MIDTERM DUE | |
| Week Six – H.L.A. Hart | Tues, May 4 | The Legal Enforcement of Morality | Hart, <i>Law, Liberty, and Morality</i> , Ch. I, pp. 1-12 |
| | Thurs, May 6 | Positive and Critical Morality | Hart, <i>Law, Liberty, and Morality</i> , Ch. I, pp. 13-24 |
| Week Seven – H.L.A. Hart | Tues, May 11 | Critique of Legal Moralism | Hart, <i>Law, Liberty, and Morality</i> , Ch. II |

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| | Thurs, May 13 | Enforcement and Punishment | Hart, <i>Law, Liberty, and Morality</i> , Ch. III |
| Week Eight – Devlin’s Response | Tues, May 18 | Liberty in Morality | Devlin, <i>The Enforcement of Morals</i> , Ch. VI |
| | Thurs, May 20 | Morality and Social Reality | Devlin, <i>The Enforcement of Morals</i> , Ch. VII |
| | Sun, May 23 | PAPER PROPOSAL DUE | |
| PART THREE | | | |
| Week Nine – Later Developments | Tues, May 25 | Democracy and Public Morality | Ronald Dworkin, “Devlin and the Enforcement of Morals” (PDF) |
| | Thurs, May 27 | Morality and Social Order | H.L.A. Hart, “Social Solidarity and the Enforcement of Morality” (PDF) |
| Week Ten – Contemporary Reactions | Tues, June 1 | Devlin: Right on Principle, Wrong on Substance? Guest Lecture (?): Prof. Gerald Dworkin (UCD) | Gerald Dworkin, “Devlin Was Right: Law and the Enforcement of Morality” (PDF) |
| | Thurs, June 3 | Enforcing Critical Morality | Steven Wall, “Enforcing Morality” (PDF) |
| Final Paper – | Fri, June 4 3:30 pm | FINAL PAPER DUE | |