

Morality and the Law

(approx. 181 pages)

Discussion Colloquium

Sponsored by the Institute for Humane Studies

Reader Abstract: This reader explores the relationship between the law and society's views on morality. The first session presents Mill's perspective on individuality and social authority to help frame the debate. The second session discusses the tension between "sin" and criminal law as a matter of jurisprudence, and raises questions about paternalism. The third session tackles the difficult question of criminalizing offensive behaviors, and the final session deals with a court case grappling with the problem of legislation against private and consensual homosexual sex.

Session 1: *Mill* (46 pages)

Mill, John Stuart. *On Liberty and the Subjection of Women*. New York: Henry Holt and Company, 1879.

- Introduction, pages 9-32
- "On Individuality, as One of the Elements of Well-being," (pages 100-132)
- "Of the Limits of the Authority of Society over the Individual," pages 133-165

Session Abstract: These three selections deal with the related problems, respectively, of liberty versus authority, individual liberty as a moral value, and the moral scope of authority over the individual. Mill defends the sovereignty of the individual, but he accepts that there is some legitimate realm of social authority that can be imposed to constrain individual behaviors, raising the more difficult question of how that authority can be specifically circumscribed.

Session 2: *Devlin vs. Hart* (59 pages)

Baron Devlin, Patrick Arthur. "Morals and the Criminal Law (1965)." In *Law and Morality: Readings in Legal Philosophy*, 369-393. Third edition. Edited by David Dyzenhaus, Sophia Reibetanz Moreau, and Arthur Ripstein. Toronto: University of Toronto Press, 2007.

Hart, H.L.A. *Law, Liberty, and Morality*. Stanford: Stanford University Press, 1963.

- "The Legal Enforcement of Morality," pages 1-24.
- "The Use and Abuse of Examples," pages 25-34.

Session Abstract: In this session, the Devlin piece raises the problem of legislating morality. He argues that society might be better if sinful behavior were limited, but that still begs the question of whether sin can be made a matter of criminal law jurisprudence. Devlin's article presents a great deal of important questions that are relevant to the larger debate regarding morality and the law, as well. The Hart piece

defends the concept of paternalism in the criminalization of vices in order to protect the individual from him or herself.

Session 3: *Feinberg* (34 pages)

Feinberg, Joel. *The Moral Limits of the Criminal Law, Volume II: Offense to Others*. Oxford: Oxford University Press, 1988.

- Excerpt from, "Offensive Nuisances," pages 10-24
- "Mediating the Offense Principle," pages 25-44

Session Abstract: The Feinberg article presents numerous cases of increasingly offensive behavior in the context of the question Mill brings up in the first session – what is the legitimate scope of social authority over the individual? His scenarios deliberately build from offenses that are probably the least likely to be seen to be legitimately prohibited by law into cases that can be clearly criminalized, with more difficult scenarios in between the two extremes to help illustrate the gray-area of moral legislation.

Session 4: *Lawrence v. Texas* (42 pages)

Lawrence v. Texas, 539 U.S. 558 (2003)

Session Abstract: The final reading is a court case that deals with a private and consensual act of homosexuality. The majority opinion, issued by Justice Kennedy, argues that the right to liberty protects the individual from government intrusion in their homes, and legislation against private and consensual sex acts are necessarily oppressive. The concurring and dissenting opinions are also included.