

INTRODUCTION TO LEGAL STUDIES

LAW, MORALITY AND JUSTICE

Announcements:

- Discussion groups start this week
- Laws 1000V students - note the changes to the groups as well as the appointment of two new TAs
- Peer Assisted Study Sessions



INTRODUCTION TO LEGAL STUDIES LAW, MORALITY AND JUSTICE

This Week: Law, Morality and Justice

Readings:

Legal Studies Course Reader:

Patrick Fitzgerald, 'Tragic Choices', pp.95-99 (5a)

R. v. Dudley & Stephens, pp.99-102 (5b)

R. v. Latimer, pp.102-105 (5c)

Ruddell & Pavlich:

Natural Law Theory: Morality and Law, Ch.5



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The Case of “Great party!!!....I did WHAT?”

- Facts recap
- Charge(s)?
- Defense(s)?

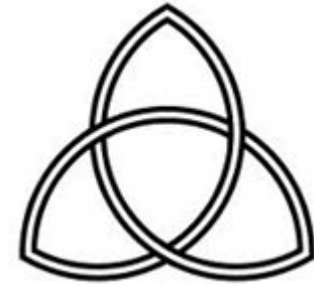


INTRODUCTION TO LEGAL STUDIES

LAW, MORALITY AND JUSTICE

- What is the purpose of law?

- Order? Justice? Peace?



- What is the proper foundation of law?

- Whose law? What order?



- What are the structures through which law functions
- that is, what does law look like?



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Depending on your normative positions,

law may look like this...



or this...



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...justice may look like this...



or this...



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Or this...



or this...



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Aristotle distinguished between two types of justice:

- ◉ ‘natural justice’ which arises from the ‘nature of things’ and exists independent of human action, and
- ◉ ‘conventional justice’ which arises from ‘human intervention’ and exists as a result of human action, such as the creation of laws, the administration of justice and the conduct of proper governance.

*‘For man, when perfected, is the best of all animals, but when separated from law and justice, he is the worst of all’**

*Pavlich, p.19

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Law and justice are both “ultimately concerned with how subjects ought to act in given sets of circumstances when different actions are possible”

Because law is directly or indirectly involved in specifying what ought to be done in specific situations, law cannot help but involve moral matters in one way or another!

Lon Fuller: the ‘internal morality of lawmaking’

John Finnis: realization of ‘self-evident moral truths’



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Fuller and the ‘internal morality of lawmaking’:

- Law is “the enterprise of subjecting human conduct to the governance of rules”
- The moral authority of law making resides in the procedures through which people carry out the rule of law in a given context
- Those procedures must possess a coherent and unique “internal morality’ that implies a set of ‘distinctive, internal rules that [legal] practitioners follow”(p.129)
- It is this internal morality which makes law - and obedience to law - possible.



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Fuller's minimum requirements for law making to have 'internal morality':

- **Generality:** No 'ad hoc' law
- **Promulgation:** the people must be informed of, and able to know, the rules
- **No retroactive law:** rule-making is always prospective
- **Clarity:** everyone understands the rules
- **Non-contradiction:** the rules do not contradict each other
- **Possibility of compliance:** the rules do not ask the impossible of the people
- **Constancy:** the rules are not constantly changing
- **Congruence between the declared rules and official action**

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John Finnis: realization of ‘self-evident moral truths’:

- “...a natural law theory is nothing other than a theory of good reasons for choice.” (p.133)
- Most of us have a natural sense of ‘what is good for us’ and thus are able to recognize the “self-evident values that lie at the heart of our human morality”
- Human beings flourish best when gathered in communities
- Healthy communities require a “common code of conduct that orders and coordinates interactions (coercively and through regulation) to achieve a common good.
- Law is such a code, and it “orders social actions in ways that enable people to pursue basic goods



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For Finnis, ‘just laws’ are guided by moral principles which further the human good and encourage ‘human flourishing’

◉ 7 basic factors integral to human flourishing:

- The valuing and transmission of life
- Knowledge for its own self
- Play
- Aesthetic experience
- Sociability and friendship
- Practical reasonableness which infuse life with an intelligent and reasonable order
- Religion or spirituality



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Fuller and Finnis:

- ◉ Valid law must be based on morally-defensible grounds
 - Fuller: “Valid law must embrace an ‘internal morality’ the materializes through rules, practices and procedures appropriate to the craft of law making” (p.137)
 - Finnis: Valid law derives its morality from a wider morality recognized by all those able to practically intuit those values which allow humans, as unique beings, to flourish

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MORALITY IS THUS CENTRAL TO LAW AND LEGAL SYSTEMS

...which begs the question:

Are we obligated to obey the law, and if not, what circumstances justify disobedience?



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'Tragic Choices'

- R.v. Dudley and Stephens
- Peril on the seas
- The dilemma: Necessity?
- The tragic choice



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Law, morality and the decision of the court

- “the real question in the case - whether killing in the circumstances set forth be or be not murder”?
- “Necessity is of three sorts- necessity of conservation of life, necessity of obedience, and necessity of the act of God or of a stranger”

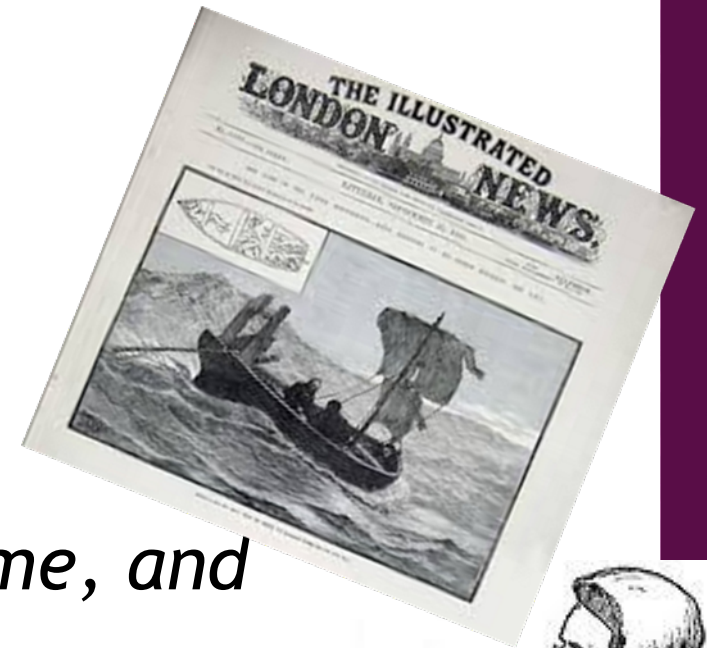


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Law, morality and the decision of the court

“Though law and morality are not the same, and many things are immoral which are not necessarily illegal, yet the absolute divorce of law from morality would be of fatal consequence; and such divorce would follow if the temptation to murder in this case were to be held by law and absolute defence of it”

R v. Dudley and Stephens, p.101



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- ***R. v. Latimer***
- The facts
- The dilemma
- The tragic choice



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Law, morality and the decision of the court:

- *Perka v. The Queen*
 - Necessity as an excuse
 - Imminent peril
 - Demonstrably impossible compliance
 - The importance of a legal alternative



“Who is to be the judge of this sort of necessity? By what measure is the comparative value of lives to be measured?”

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◉ The BIG Picture:

- Fuller: morality of law bound up with lawmaking
- Finnis: valid law embraces a morality that enables human communities to flourish
- Our understandings of law and justice are intertwined with our normative positions
- And because moralities are different and contestable, law will always be a site of struggle
- Hence the questions: Whose law? What order?