Moral Limits of the Criminal Law
LDST 371, Section 1

Spring 2013
Course Syllabus

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Office Hours: Open door and by appointment

COURSE DESCRIPTION

All leadership occurs in a social and legal context. This context sets the parameters for permissible thought, speech, discussion, association, and action. As a result, what leaders can do—indeed, who gets to lead or whether people can be leaders at all—partly depends on the ways in which we understand the nature of liberty and, especially, the constraints we put on ourselves or have put upon us. First, leadership almost always involves change or innovation. As such, leadership assumes that people are well positioned to think new thoughts and to practice novel behaviors. Secondly, leadership is a relation of influence. It involves getting other people to consider new ideas and, in some cases, to adopt these beliefs as their own and to organize their lives around them. So when there are significant limits on freedom to deviate from a religious doctrine, the political orthodoxy, sexual customs, and so on, we are more likely to be followers than leaders.

The purpose of this course is to get us to think deeply and carefully about the moral justifications for any social or legal impediments to liberty and to come to some considered conclusions about whether these justifications work generally and, in particular, in contemporary leadership contexts. We will approach the justifications for restricting liberty from the perspective of philosophy of law in the Anglo-American tradition. We will begin with English philosopher John Stuart Mill’s answer in On Liberty to questions about “the nature and limits of the power which can be legitimately exercised by society over the individual” (1). Mill’s response to this question was to “assert one very simple principle...that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection” (9). To determine whether there might be other “liberty-limiting principles” (Feinberg,
9) in addition to Mill's “harm principle” (Feinberg, 13), a core tenet of liberalism, we will turn to Mill nineteenth-century critic James Fitzjames Stephen and the work of twentieth-century thinkers such as Patrick Devlin and H.L.A. Hart. A volume from Joel Feinberg's four-volume series *The Moral Limits of the Criminal Law* will also allow us to give serious consideration to whether we would be justified in using the criminal law to limit the liberty of individuals who engage in offensive behavior. The “Rushdie Affair” will serve as our central case study for the semester and the basis for your term papers.

This course is designed as a seminar, which means that all participants bear part of the burden of explaining, critiquing, and developing the ideas conveyed in the readings. To facilitate this process, each student will be asked to prepare three weekly essays on the readings over the semester. I will regularly ask students to speak from their papers as an impetus to our discussions. Please also note that we begin and end on time and that students are expected to be in class for the entire class period. (We will take a break each class.) You may use computers in class, but you must first send me an email pledging that you will restrict your usage to the course-related activities such as note-taking.

**REQUIRED TEXTS**


REQUIREMENTS AND GRADING

Your final grade will be determined as follows:

1. Class Contribution 10%
2. Weekly Essays (3) 20%
3. Quiz 1 5%
4. Quiz 2 10%
5. Presentation 10%
6. Term Paper 20%
7. Final Examination 25%

Attendance affects your class contribution grade. If you are absent, you will not be able to contribute to the class. Punctual and full class attendance is also required for essay credit. Weekly essays critique, analyze, and develop the arguments in the readings for the assigned day. They should take the following form: double-spaced, typed pages, consisting of at least 1000 words. Essays must be emailed to me by 7:00 p.m. on Tuesday each week. In some cases, the assignment days for the weekly essays may change. When this happens, you will be responsible for writing for the new assignment day.

The instructor takes deadlines and scheduled exams very seriously. In fairness to your classmates, any difficulties that arise should be brought to my attention as soon as possible before the deadline or scheduled exam. No late work will be accepted, unless accompanied by a completed and approved request form. The form can be found attached to this syllabus. It cannot be used for weekly essays. Please note that computer problems never constitute an acceptable excuse.

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1 The Jepson School supports the provisions of the Honor System as sanctioned by the School of Arts and Sciences. Every piece of written work must have the honor pledge and the student’s signature on it. The pledge is: “I pledge that I have neither given nor received unauthorized assistance during the completion of this work.” I reserve the right the refuse to accept any work submitted without the honor pledge.
Grading legend:

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If you need **accommodations** for any of the assessments, please contact the instructor during the first week of classes.

**SCHEDULE (subject to change as the course progresses)**

I. The “Rushdie Affair”

**Wednesday, January 16**
Rushdie, pp. 1-75

II. The Liberal Harm Principle

**Tuesday, January 22**
WEEKLY ESSAY 1 (GROUP A)

**Wednesday, January 23**
Mill, Chapter I-II
Rushdie, pp. 76-150

**Tuesday, January 29**
WEEKLY ESSAY 1 (GROUP B)
Wednesday, January 30
Mill, Chapters III-V
Rushdie, pp. 151-225

III. Legal Moralism

Tuesday, February 5
WEEKLY ESSAY 1 (Group C)

Wednesday, February 6
Stephen, Chapters 1-2
Rushdie, pp. 226-300

Tuesday, February 12
WEEKLY ESSAY 2 (Group A)

Wednesday, February 13
Stephen, Chapter 4 (through p. 108)
Rushdie, pp. 301-375
QUIZ 1

Tuesday, February 19
WEEKLY ESSAY 2 (Group B)

Wednesday, February 20
Devlin, Chapter 1 and 6
Rushdie, pp. 376-450

IV. Legal Paternalism

Tuesday, February 26
WEEKLY ESSAY 2 (Group C)

Wednesday, February 27
Hart, Chapters 1-2
Rushdie, pp. 451-525
Tuesday, March 5
   WEEKLY ESSAY 3 (Group A)

Wednesday, March 6
   Hart, Chapter 3
   Devlin, Chapter 7
   Rushdie, pp. 526-600

SPRING BREAK

V. The Offense Principle

Tuesday, March 19
   WEEKLY ESSAY 3 (Group B)

Wednesday, March 20
   Feinberg, Chapter 7-8
   Rushdie, pp. 601-636

Wednesday, March 27
   Nazila Fathi lecture, 3:00-4:30
   Quiz 2

Tuesday, April 2
   WEEKLY ESSAY 3 (Group C)

Wednesday, April 3
   Feinberg, Chapter 9

Wednesday, April 10
   GROUP A PRESENTATIONS

Wednesday, April 17
   GROUP B PRESENTATIONS

Wednesday, April 24
   GROUP C PRESENTATIONS
Friday April 26
TERM PAPER DUE (5:00 p.m. in my box in 126 Jepson Hall)

Thursday, May 2, 2:00-5:00
FINAL EXAM
REQUEST FOR EXTENSION/MAKE-UP

1. Today’s Date:

2. Original Assignment Date:

3. Reason for Extension/Make-up:

4. Proposed Due Date/Make-up Date:

5. Instructor Signature:

6. Your Signature:

Submit this form with the completed assignment (e.g., paper, make-up exam, etc.). This form will not be accepted if incomplete (e.g., if #5 is blank).