The Morality Of Law By Lon L Fuller

At a time when age-old political structures are crumbling, civil strife abounds, and economic uncertainty permeates the air, loyalty offers us security in our relationships with associates, friends, and family. Yet loyalty is a suspect virtue. It is not impartial. It is not blind. It violates the principles of morality that have dominated Western thought for the last two hundred years. Loyalties are also thought to be irrational and contrary to the spirit of Capitalism. In a free market society, we are encouraged to move to the competition when we are not happy. This way of thinking has invaded our personal relationships and undermined our capacities for friendship and loyalty to those who do not serve our immediate interests. As George P. Fletcher writes, it is time for loyal bonds, born of history and experience, to prevail both over impartial morality and the self-interested thinking of the market trader. In this extended essay, George P. Fletcher offers an account of loyalty that illuminates its role in our relationships with family and friends, our ties to country, and the commitment of the religious to God and their community. Fletcher opposes the traditional view of the moral self as detached from context and history. He argues instead that loyalty, not impartial detachment, should be the central feature of our moral and political lives. Writing as a political "liberal," he claims that a commitment to country is necessary to improve the lot of the poor and disadvantaged. This commitment to country may well require greater reliance on patriotic rituals in education and a reconsideration of the Supreme Court's extending the First Amendment to protect flag burning. Given the worldwide currents of parochialism and political decentralization, the task for us, Fletcher argues, is to renew our commitment to a single nation united in its diversity. Bringing to bear his expertise as a law professor, Fletcher reasons that the legal systems should defer to existing relationships of loyalty. Familial, professional, and religious loyalties should be respected as relationships beyond the limits of the law. Thus surrogate mothers should not be forced to surrender and betray their children, spouses should not be required to testify against each other in court, parents should not be prevented from willing their property to their children, and the religiously committed should not be forced to act contrary to conscience. Yet the question remains: Aren't loyalty, and particularly patriotism, dangerously one-sided? Indeed, they are, but no more than are love and friendship. The challenge, Fletcher maintains, is to overcome the distorting effects of impartial morality and to develop a morality of loyalty properly suited to our emotional and spiritual lives. Justice has its sphere, as do loyalties. In this book, Fletcher provides the first step toward a new way of thinking that recognizes the complexity of our moral and political lives.

In this bold and timely work, law professor Jeffrey Shulman argues that the United States Constitution does not protect a fundamental right to parent. Based on a rigorous reconsideration of the historical record, Shulman challenges the notion, held by academics and the general public alike, that parental rights have a long-standing legal pedigree. What is deeply rooted in our legal tradition and social conscience, Shulman demonstrates, is the idea that the state entrusts parents with custody of the child, and it does so only as long as parents meet their fiduciary duty to serve the developmental needs of the child. Shulman’s illuminating account of American legal history is of more than academic interest. If once again we treat parenting as a delegated responsibility—as a sacred trust, not a sacred right—we will not all reach the same legal prescriptions, but we might be more willing to consider how time-honored principles of family law can effectively accommodate the evolving interests of parent, child, and state.

Does the morality of abortion depend on the moral status of the human fetus? Must the law of abortion presume an answer to the question of when personhood begins? Can a law which permits late abortion but not infanticide be morally justified? These are just some of the questions this book sets out to address. With an extended analysis of the moral and legal status of abortion, Kate Greasley offers an alternative account to the reputable arguments of Ronald Dworkin and Judith Jarvis Thomson and instead brings the philosophical notion of 'personhood' to the foreground of this debate. Structured in three parts, the book will (I) consider the relevance of prenatal personhood for the moral and legal evaluation of abortion; (II) trace the key features of the conventional debate about when personhood begins and explore the most prominent issues in abortion ethics literature: the human equality problem and the difference between abortion and infanticide; and (III) examine abortion law and regulation as well as the differing attitudes to selective abortion. The book concludes with a snapshot into the current controversy surrounding the scope of the right to conscientiously object to participation in abortion provision.

This volume gathers leading moral, legal, and political philosophers alongside theologians to examine John Finnis' work. The book offers the first sustained critical study of Finnis' contribution across the philosophy of rationality, legal and political philosophy, and theology. It includes a substantial response from Finnis himself in which he defends and develops his ideas.

The laws are not silent in war, but what should they say? What is the moral function of the law of armed conflict? Should the law protect civilians who do not fight but help those who do? Should the law protect soldiers who perform non-combat functions or who may be safely captured? How certain should a soldier be that an individual is a combatant rather than a civilian before using lethal force? What risks should soldiers take on themselves to avoid harming civilians? When do inaccurate weapons become unlawfully indiscriminate? When does 'collateral damage' to civilians become unlawfully disproportionate? Should civilians lose their legal rights by serving, voluntarily or involuntarily, as human shields? Finally, when should killing civilians constitute a war crime? These are the questions that Law and Morality at War answers, contributing to a cutting-edge international debate. Drawing on the concepts and methods of contemporary moral and legal philosophy, the book develops a normative framework within which the laws of war and international criminal law can be evaluated, criticized, and reformed. While several philosophical works critically examine the moral status of civilians and combatants, this book fills a gap, offering both an account of the laws of war and war crimes, and proposing how the law could be improved from a moral point of view. Finally, it explores when, if ever, the emotional pressures

under which soldiers act should partially or wholly excuse their wrongful actions --Flap of book cover.
This book provides a thorough critical overview of the current debate on the ethics of war, as well as a modern just war theory that can give practical action-guidance by recognizing and explaining the moral force of widely accepted law. Traditionalist, Walzerian, and "revisionist" approaches have dominated contemporary debates about the classical jus ad bellum and jus in bello requirements in just war theory. In this book, Uwe Steinhoff corrects widely spread misinterpretations of these competing views and spells out the implications for the ethics of war. His approach is unique in that it complements the usual analysis in terms of self-defense with an emphasis on the importance of other justifications that are often lumped together under the heading of "lesser evil." It also draws on criminal law and legal scholarship, which has been largely ignored by just war theorists. Ultimately, Steinhoff rejects arguments in favor of "moral fundamentalism"— the view that the laws and customs of war must simply follow an immutable morality. In contrast, he argues that widely accepted laws and conventions of war are partly constitutive of the moral rules that apply in a conflict. The Ethics of War and the Force of Law will be of interest to scholars and advanced students working in just war theory, applied ethics, political philosophy, political theory, philosophy of law, and criminal and military law.
Much of what we could do, we shouldn’t—and we don’t. Mark Osiel shows that common morality—expressed as shame, outrage, and stigma—is society’s first line of defense against transgressions. Social norms can be indefensible, but when they complement the law, they can save us from an alternative that is far worse: a repressive legal regime.
Explores how Martin Luther King, Jr built his advocacy on moral claims of love, justice and human nature.
The essays in this collection explore, from philosophical and religious perspectives, a variety of moral emotions and their relationship to punishment and condemnation or to decisions to lessen punishment or condemnation.
The concept of practical reason is central to contemporary thought on ethics and the philosophy of law - acting well means acting for good reasons. Explaining this requires several stages. How do reasons relate to actions at all, as incentives and in explanations? What are values, how do they relate to human nature, and how do they enter practical reasoning? How do the concepts of 'right and wrong' fit in, and in what way do they involve questions of mutual trust among human beings? How does our moral freedom - our freedom to form our own moral commitments - relate to our responsibilities to each other? How is this final question transposed into law and legal commitments? This book explores these questions, vital to understanding the nature of law and morality. It presents a clear account of practical reason, valuable to students of moral philosophy and jurisprudence at undergraduate or postgraduate levels. For more advanced scholars it also offers a reinterpretation of Kant's views on moral autonomy and Smith's on self-command, marrying Smith's 'moral sentiments' to Kant's 'categorical imperative' in a novel way. The book concludes and underpins the author's Law, State and Practical Reason series. Taken together the books offer an overarching theory of the nature of law and legal reason, the role of the State, and the nature of moral reason and judgement.
Critics take the unclear status of restorative justice practices, along with their vagueness in meaning and purpose, as a clear invitation to a fundamental questioning of the legitimacy of these practices. Their supporters consider the experiment of restorative justice as a platform for reforming penal institutions and for rethinking the legitimacy of orthodox legal reasoning. Within the framework of a rechtsstaat, a democratic state governed by fundamental rights and by the rule of law, both issues of legitimacy lead not only to reflection on concepts such as restoration, punishment, or on such notions as harm and wrong. Questioning the legitimacy both of restorative justice practices and of the prevailing penal system also inevitably involves some reflection on, and articulation of, the underlying values and normative aspirations of such a democratic constitutional state. What are these values and how can they be given appropriate expression in the leading concepts and principles of the criminal law? To what extent are fundamental rights and principles of the rule of law sufficiently reflected in the practices of restorative justice? How are these practices to be related to the criminal justice system according to the normative aspirations of a democratic constitutional state? To what degree can current penal practices be made continuous with these aspirations? These fundamental questions formed the intellectual framework for the 10th Aquinas Conference on Restorative Justice, Punishment and the Morality of Law, at which conference the larger part of the papers published in this volume were presented. Consistent with the structure of the conference, this collection of essays is organised into three parts, each focussing on one central topic and containing a lead essay and corresponding replies. The first part offers critical scrutiny of one of the cornerstones of a criminal justice system governed by the rule of law, namely the principle of legality. Efforts are made to empower this principle through reflection on its underlying values and aspirations, and this in order to meet some of the legitimate ideals and concerns of restorative justice. These efforts are subsequently assessed from both sociological and philosophical perspectives. In the second part, attention is drawn to the legitimacy of restorative justice practices. Here, the normative intuitions of a democratic constitutional state serve either as a critical framework to assess these practices, or, more optimistically, as ideals to whose realisation restorative justice is supposed to make a valuable contribution. And, finally, in the third part, reflection on the value of restorative justice brings us to a fundamental questioning of the legitimacy of punishment and penal practices. Central to the discussion is whether it is possible to interpret and normatively reconstruct the idea and practice of punishment so as to make them compatible with, and even continuous with, the underlying values of a democratic constitutional state.
Winner of the W.J.M. Mackenzie Prize awarded by the Political Studies Association 1987, and the Elaine and David Spitz Prize for the best book on liberal or democratic theory. 'as significant a new statement of liberal principles as anything since Mill's On Liberty.' Times Literary Supplement
The controversy surrounding targeted killings represents a crisis of conscience for policymakers, lawyers, philosophers and leading military experts grappling with the moral and legal limits of the war on terror. The book examines the legal and philosophical issues raised by government efforts to target suspected terrorists without giving them the safeguards of a fair trial.
Sex, Morality, and the Law combines legal and philosophical arguments to focus on six controversial topics; homosexual sex, prostitution, pornography, abortion, sexual harassment, and rape. Suitable for use in several disciplines at both undergraduate and graduate levels, this anthology includes critical court decisions and essays representing a diversity of conservative, liberal, and feminist positions.
Shane Epting illustrates that the problem of “moral prioritization” rests at the heart of problems with city transportation systems. To overcome such challenges, he develops a multitiered assessment system that shows how to evaluate complicated affairs in urban mobility.
This book investigates the dynamic intertwinement of law and morality, with a focus on new and developing fields of law. Taking as its starting point the debates and mutual misunderstandings between proponents of different philosophical traditions, it argues that this theoretical pluralism is better explained once law is accepted as an essentially ambiguous concept. Continuing on, the book develops a robust theory of law that increases our grasp on global legal pluralism and the dynamics of law. This theory of legal interactionism, inspired by the work of Lon Fuller and Philip Selznick, also helps us to understand apparent anomalies of modern law, such as international law, the law of the European Convention on

Human Rights and horizontal interactive legislation. In an ecumenical approach, legal interactionism does justice to the valuable core of truth in natural law and legal positivism. Shedding new light on familiar debates between authors such as Fuller, Hart and Dworkin, this book is of value to academics and students interested in legal theory, jurisprudence, legal sociology and moral philosophy.

First published in 1929, this book explores the crucial, ethical question of the objects and the justification of punishment. Dr. A. C. Ewing considers both the retributive theory and the deterrent theory on the subject whilst remaining commendably unprejudiced. The book examines the views which emphasize the reformation of the offender and the education of the community as objects of punishment. It also deals with a theory of reward as a compliment to a theory of punishment. Dr. Ewing's treatment of the topics is philosophical yet he takes in to account the practical considerations that should determine the nature and the amount of the punishment to be inflicted in different types of cases. This book will be of great interest to students of philosophy, teachers and those who are interested in the concrete problems of punishment by the state. It is an original contribution to the study of a subject of great theoretical and practical importance.

Modern administrative law has been the subject of intense and protracted intellectual debate. In this book, Richard A. Epstein, one of America’s most prominent legal scholars, provides a withering critique of the progressive administrative state and calls for a return law to its original design, meaning, and structure.

Americans are ruled by an unwritten constitution consisting of executive orders, signing statements, and other quasi-laws designed to reform society, Bruce Frohnen and George Carey argue. Consequently, the Constitution no longer means what it says to the people it is supposed to govern and the government no longer acts according to the rule of law.

Dworkin's important book is a collection of essays which discuss almost all of the great constitutional issues of the last two decades, including abortion, euthanasia, capital punishment, homosexuality, pornography, and free speech. Dworkin offers a consistently liberal view of the Constitution and argues that fidelity to it and to law demands that judges make moral judgments. He proposes that we all interpret the abstract language of the Constitution by reference to moral principles about political decency and justice. His 'moral reading' therefore brings political morality into the heart of constitutional law. The various chapters of this book were first published separately; now drawn together they provide the reader with a rich, full-length treatment of Dworkin's general theory of law.

This is a work on the role of morality in the various components of the criminal justice system. Specifically the role of defense counsel and prosecutor, the role of the police, the court, corrections, probation and parole officers, and the victims of crimes themselves as well as related issues.

The second edition retains the selection of texts presented in the first edition but offers them in new translations by Richard J Regan -- including that of his Aquinas, Treatise on Law (Hackett, 2000). A revised Introduction and glossary, an updated select bibliography, and the inclusion of summarising headnotes for each of the units -- Conscience, Law, Justice, Property, War and Killing, Obedience and Rebellion, and Practical Wisdom and Statecraft -- further enhance its usefulness.

When is it morally permissible to engage in self-defense or the defense of others? Jonathan Quong defends a variety of novel ideas in this book about the morality of defensive force, providing an original philosophical account of the central moral principles that should regulate its use. We cannot understand the morality of defensive force, he reasons, until we ask and answer deeper questions about how the use of defensive force fits with a more general account of justice and moral rights. In developing this stance, Quong presents new views on liability, proportionality, and necessity. He argues that self-defense can sometimes be justified on the basis of an agent-relative prerogative to give greater weight to one's own life and interests, contrary to the dominant view in the literature. Additionally Quong develops a novel conception of individual rights against harm. Unlike some, who believe that our rights against harm are fact-relative, he argues that our rights against being harmed by others must, in certain respects, be sensitive to the evidence that others can reasonably be expected to possess. The book concludes with Quong's extended defense of the means principle, a principle that prohibits harmfully using other persons' bodies or other rightful property unless those persons are duty bound to permit this use or have otherwise waived their claims against such use.

To understand one another as individuals and to fulfill the moral duties that require such understanding, we must communicate with each other. We must also maintain protected channels that render reliable communication possible, a demand that, Seana Shiffrin argues, yields a prohibition against lying and requires protection for free speech. This book makes a distinctive philosophical argument for the wrong of the lie and provides an original account of its difference from the wrong of deception. Drawing on legal as well as philosophical arguments, the book defends a series of notable claims—that you may not lie about everything to the "murderer at the door," that you have reasons to keep promises offered under duress, that lies are not protected by free speech, that police subvert their mission when they lie to suspects, and that scholars undermine their goals when they lie to research subjects. Many philosophers start to craft moral exceptions to demands for sincerity and fidelity when they confront wrongdoers, the pressures of non-ideal circumstances, or the achievement of morally substantial ends. But Shiffrin consistently resists this sort of exceptionalism, arguing that maintaining a strong basis for trust and reliable communication through practices of sincerity, fidelity, and respecting free speech is an essential aspect of ensuring the conditions for moral progress, including our rehabilitation of and moral reconciliation with wrongdoers.

Since its first publication in 1996, Law and Morality has filled a long-standing need for a contemporary Canadian textbook in the philosophy of law. Now in its third edition, this anthology has been thoroughly revised and updated, and includes new chapters on equality, judicial review, and terrorism and the rule of law. The volume begins with essays that explore general questions about morality and law, surveying the traditional literature on legal positivism and contemporary

debates about the connection between law and morality. These essays explore the tensions between law as a protector of individual liberty and as a tool of democratic self-rule, and introduce debates about adjudication and the contribution of feminist approaches to the philosophy of law. New material on the Chinese Canadian head tax case is also featured. The second part of Law and Morality deals with philosophical questions as they apply to contemporary issues. Excerpts from judicial decisions as well as essays by practicing lawyers are included to provide theoretically informed legal analyses of the issues. Striking a balance between practical and more analytic, philosophical approaches, the volume's treatment of the philosophy of law as a branch of political philosophy enables students to understand law in its function as a social institution. Law and Morality has proved to be an essential text in both departments of philosophy and faculties of law and this latest edition brings the debates fully up to date, filling gaps in the previous editions and adding to the array of contemporary issues previously covered.

This book explores the relationship between the law and pervasive and persistent reasonable disagreement about justice. It reveals the central moral function and creative force of reasonable disagreement in and about the law and shows why and how lawyers and legal philosophers should take reasonable conflict more seriously. Even though the law should be regarded as the primary mode of settlement of our moral conflicts,it can, and should, also be the object and the forum of further moral conflicts. There is more to the rule of law than convergence and determinacy and it is important therefore to question the importance of agreement in law and politics. By addressing in detail issues pertaining to the nature and sources of disagreement, its extent and significance, as well as the procedural, institutional and substantive responses to disagreement in the law and their legitimacy, this book suggests the value of a comprehensive approach to thinking about conflict, which until recently has been analysed in a compartmentalized way. It aims to provide a fully-fledged political morality of conflict by drawing on the analysis of topical jurisprudential questions in the new light of disagreement. Developing such a global theory of disagreement in the law should be read in the context of the broader effort of reconstructing a complete account of democratic law-making in pluralistic societies. The book will be of value not only to legal philosophers and constitutional theorists, but also to political and democratic theorists, as well as to all those interested in public decision-making in conditions of conflict.

The essays collected in this book illustrate the application to one or another political or jurisprudential problem of general views about morality and the law.

Contrasts liberal views in the tradition of John Locke with conservative Whig attitudes as personified by Edmund Burke in a consideration of moral duty and civil disobedience

The book relates the normativity of law to law's internal sociality and shows the multi-layered nature of legal normativity.

Lon Fuller, one of the great American jurists of this century, is often remembered only for his stand on the morality of law in the Fuller-Hart debate. Rediscovering Fuller considers the full range of Fuller's writings, from his early engagement with legal fictions and his critique of legal positivism to his later work on implicit law and the art of institutional design. Contributors from the fields of both civil law and common law argue that Fuller's insights are highly relevant to contemporary concerns. The book contains essays by K. Winston, D. Dyzenhaus, P. Cliteur, F. Schauer ("Beyond the Fuller-Hart Debate"), P. Westerman, W. van der Burg, D. Luban ("Moralities of Law"), G. Postema, P. Teachout ("Implicit Law"), R. Macdonald, W. Witteveen, J. Allison, M. Hertogh, K. Soltan ("The Art of Institutional Design"), J. Allan, F. Mootz, J. Vining ("Law's Dialogue"), and a preface by Ph. Selznick. "At some point in the future, when we become more open to the moral relevance of social inquiry, more empirical in our study of philosophical issues, more capable of uniting moral and social theory, Lon Fuller's work will stand as a landmark. This volume will help show the way." —Ph. Selznick

Morality and the Nature of Law explores the conceptual relationship between morality and the criteria that determine what counts as law in a given societythe criteria of legal validity. Is it necessary condition for a legal system to include moral criteria of legal validity? Is it even possible for a legal system to have moral criteria of legal validity? The book considers the views of natural law theorists ranging from Blackstone to Dworkin and rejects them, arguing that it is not conceptually necessary that the criteria of legal validity include moral norms. Further, it rejects the exclusive positivist view, arguing instead that it is conceptually possible for the criteria of validity to include moral norms. In the process of considering such questions, this book considers Raz's views concerning the nature of authority and Shapiro's views about the guidance function of law, which have been thought to repudiate the conceptual possibility of moral criteria of legal validity. The book, then, articulates a thought experiment that shows that it is possible for a legal system to have such criteria and concludes with a chapter that argues that any legal system, like that of the United States, which affords final authority over the content of the law to judges who are fallible with respect to the requirements of morality is a legal system with purely source-based criteria of validity.

This book seeks to reframe our understanding of the lawyer's work by exploring how Martin Luther King, Jr built his advocacy on a coherent set of moral claims regarding the demands of love and justice in light of human nature. King never shirked from staking out challenging claims of moral truth, even while remaining open to working with those who rejected those truths. His example should inspire the legal profession as a reminder that truth-telling, even in a society that often appears morally balkanized, has the capacity to move hearts and minds. At the same time, his example should give the profession pause, for King's success would have been impossible without his substantive views about human nature and the ends of justice. This book is an effort to reframe our conception of morality's relevance to professionalism through the lens provided by the public and prophetic advocacy of Dr King.