Gyges was a shepherd in the service of the ruler of Lydia. One day there was a violent thunderstorm, and an earthquake broke open the ground and created a crater at the place where Gyges was tending his sheep. Seeing the big hole, Gyges was filled with amazement and went down into it.

And there, in addition to many other wonders of which we are not told, he saw a hollow bronze horse. There were window-like openings in it, and peeping in, he saw a corpse, which seemed to be of more than human size, wearing nothing but a gold ring on its finger. He took the ring and came out of the crater. He wore the ring at the usual monthly meeting that reported to the king on the state of the flocks of sheep.

As he was sitting among the others, he happened to turn the setting of the ring towards himself to the inside of his hand. When he did this, he became invisible to those sitting near him, and they went on talking as if he had gone. He wondered at this, and, fingering the ring, he turned the setting outwards again and became visible. So he experimented with the ring to test whether it indeed has this power – and it did. If he turned the setting inward, he became invisible; if he turned it outward, he became visible again.

When he realized this, he at once arranged to become one of the messengers sent to report to the king. And when he arrived there, he quickly became the queen's lover. With her help he attacked the king, killed him, and took over the kingdom.
Imagine you know two people. One of them is a good, moral person, the other is not. Imagine that each of these people got a ring like the one in the story. How would the good person behave? How about the bad person? Now imagine that you had a ring like this. How would you act? If you could make everyone think that you were a good person, without actually having to be one, wouldn’t that be better? If not, why not? Is it important to you to be a good person for some other reason?

The story of the Ring of Gyges is told by Glaucon. Glaucon thinks that being a moral person is halfway between the best thing of all, namely, to be able to go after what we want without restriction, and the worst thing of all, to suffer when other try to do the same. In other words, Morality requires that we give up some of our freedom in exchange for some security, so that we can pursue at least some of those things we want. This view of morality (and law) is called social contract theory.

Thomas Hobbes, an English philosopher, further developed the social contract theory. In his view, prior to the social contract, people lived in a “state of nature” where everyone was at war with each other. During this period, life was “solitary, poor, nasty, brutish and short.” People entered into a social contract, an agreement to be bound by rules and to obey a sovereign in order to escape this condition. This is how government came into being.

For Hobbes, law and government are needed in order to establish and preserve order and security. Everyone needs to give up some of their freedom in order to create an orderly society. Do you agree?

What is the connection between law and morality?

There are rules of morality, just as there are rules of law, but these are different kinds of rules. Violations of moral rules can bring disturbance to individual conscience and social sanctions. Violation of the rules of law bring loss of or reduction in freedom and possessions. Just because something is illegal, that does not necessarily mean it is immoral – and vice versa.

Law and morality can be thought of as two intersecting circles. Where they overlap, we find congruence between law and morality. For example, murder is both illegal and immoral.
Outside the overlapping zone, are actions which many would consider
- illegal, but not immoral, such as drinking alcohol when you are below the legal age
- Immoral, but not illegal, such as adultery.

Of course, the greater the intersection between law and morality, the more likely members of society are to follow and respect a law.

Conflict between law and morality.
- Of course, there will always be some cases where there will be a conflict between the moral code of an individual or group and the rest of society.
- For Example:
  - Honor killings – a person believes he is morally obligated to kill a female relative.
  - Conscientious objection – a person believes it would be immoral to serve in the military.
- In both of these cases, the actor faces legal sanctions (punishment) for an act he feels to be morally necessary, or for not doing an act he feels to be morally wrong.

A more extreme example is where the law is in conflict with the morality of the majority. For example, in South Africa under apartheid.

In such cases, can we say that the “laws” are laws at all? Put another way, is law anything that the government says it is? Or can a law be so bad, or so unjust, that it is not a law at all?

We will return to this later, when we talk about justice.

Which “immoral” activities should the law care about?
- A famous English philosopher of law, H.L.A. Hart, engaged in a debate with a famous English judge, Lord Devlin, about just this question.
- At issue was a report by a committee which recommended legalizing prostitution and making homosexual acts between adults legal. (this was in 1957.)
- The authors of the report said there were areas of morality which were “not the law’s business.”

When should the law forbid what most people think is immoral?
- The people who wrote the report on prostitution and homosexuality argued that the only justification society has for making immoral conduct illegal is self-defense.
- They thought that unless one person’s actions were going to harm someone else, or society as a whole, society had no right to make those actions illegal.
  - (following John Stuart Mill.)
- Because prostitution and homosexual sex between adults doesn’t hurt anyone, the authors argued that those things should be legal.

Lord Devlin disagreed. He argued that society could punish acts that most people thought were “grossly immoral.”
- Devlin thought the basis of society was shared morality, or "social cohesion."
- He thought those acts, even if done in private, undermined society.
- Therefore, society had the right to punish such conduct, or else it would disintegrate from within.
Hart argued that:

- Modern, pluralistic societies don't necessarily need a shared morality.
- Even a society does have a shared morality, it isn't clear that it needs to defend itself from competing moralities.
  - Is a western society, for example, undermined because some Muslims living in it do not think drinking alcohol is moral? How about a woman with a headscarf?

Corrective v. distributive justice: (from Aristotel):
- Corrective: redress of crimes and civil wrongs.
  - Justice of the courts
- Distributive: giving each person in society what he/she deserves.
  - Justice of legislators.

Aristotle and other philosophers thought that justice meant treating like cases the same, and different cases differently.

What does this mean?

One Conception of Justice - Utilitarianism (Jeremy Bentham, J.S. Mill)
- Bentham said people are under two “masters,” pain and pleasure. A good action is one that produces the most happiness for the most people.
  - Distributive justice: the policy that produces the most happiness for the most people is the most just.
  - Corrective justice: we can rehabilitate criminals by punishing them – if we cause them pain which is greater than the pleasure to be gained by criminal activity, they won’t break the law.

Is this conception of justice correct?

How useful is this conception of justice?
But must law embody justice?

- There have been two basic answers to this question:
  - The **Positivist** view: law just a collection of rules.
    - Anything validly enacted by a government is a law, whether it is a good law or not.
  - The **Natural Law** view: laws are rules in accordance with universal laws of nature.
    - Any rule enacted by a government that is in accordance with natural laws is a law. A law which violates natural law is not a law at all.

So a positivist would say that racist laws under apartheid in South Africa, or in Nazi Germany were bad laws.

- While a natural law theorist would say that unjust laws in these countries were not laws at all, or even that these countries didn't really even have legal systems.

Why does this matter?

- Is there any practical difference between saying that a rule is so bad that it is not a law at all and saying it is a bad law?
- Some Positive law theorists say that just because we say a bad rule is a law, that doesn't mean there might not be times when we should not follow the law because it is immoral.
  - But by being clear that bad laws are still laws, we will be less likely to leave bad laws on the books. We can get rid of them, instead of pretending they don't exist.

- Natural law theorists say that there is – because by saying that a rule is a law, we make it worthy of respect.

- Lawyers, who are conservative by nature, will say we have to respect and follow a rule, even a bad one, just because it is the law.

- The view that people have natural rights is often at the center of rebellions against state power.

QUESTIONS:

- If you are faced with a law that you think is immoral, should you violate it?
  - What if everyone did that?
- Is it wrong to violate the law, even if you do not agree with it, just because it is a law?