

LAW AND THE UNCONSCIOUS MIND

PROFESSOR DUNCAN – SPRING, 2010

But there is no such thing as a simple response to reality. External reality has to be “acquired.” To deny that there is anything other than external reality . . . is a denial of the unconscious.

Juliet Mitchell, *Psychoanalysis and Feminism*

Man lives, not nakedly or directly in nature like the animals, but within a mythological universe. Most of this is held unconsciously.

Northrop Frye, *The Great Code: The Bible and Literature*

To us he is no more a person
Now but a whole climate of opinion.

W. H. Auden, *In Memory of Sigmund Freud*

COURSE DESCRIPTION

- How can prison be irresistibly alluring, and what does this allure imply for the purposes of punishment?
- How does the character of the one-time criminal differ from that of the career offender?
- How does stealing gratify both the wish to be dependent and the wish to be “macho” and aggressive?
- Why are metaphors of soft, wet dirt (such as *slime* and *scum*) commonly used for criminals, and why is this usage not really as negative as it seems?
- Why might the world be a *poorer* place without criminals?

These are some of the intriguing questions that will be explored in this class. In addition, the course provides a basic understanding of psychoanalysis, including infantile sexuality, the unconscious, and the defense mechanisms, such as denial, repression, undoing, and splitting. The class format will consist in lecture, discussion, movies, and (a few) games.

GRADING POLICY

A three-hour examination (in class) will be the primary basis for the grade. In the event that a student is on the border between two grades, attendance and participation may also be counted.

COURSE MATERIALS

BOOKS AND ARTICLES

The following books will be read in their entirety or in substantial part:

Franz Alexander & William Healy, **ROOTS OF CRIME.**

Charles Brenner, **AN ELEMENTARY TEXTBOOK OF PSYCHOANALYSIS**

Martha Grace Duncan, **ROMANTIC OUTLAWS, BELOVED PRISONS: THE UNCONSCIOUS MEANINGS OF CRIME AND PUNISHMENT**

Muriel Gardiner, **THE DEADLY INNOCENTS: PORTRAITS OF CHILDREN WHO KILL**

Though not required, Nancy McWilliams, **PSYCHOANALYTIC DIAGNOSIS**, is highly recommended for the light it sheds on the defense mechanisms.

Note: **ROOTS OF CRIME** and **THE DEADLY INNOCENTS** may be purchased in the Photocopy Center of Emory Law School. The other books are available from Amazon and local bookstores. Briefer assigned readings are on electronic reserve. To access these, go to the Emory Law School home page. Click on "Law Library." Click on "Reserves Direct." Enter your user I.D. Then enter your Emory password.

MOVIES AND TELEVISION SERIES

Selected episodes from the movie *Ordinary People* and the HBO series *In Treatment* will be shown in class. At least two full-length movies will be assigned in their entirety and shown in class: *The Shawshank Redemption* and *Les Misérables* (1998 version, with Liam Neeson and Geoffrey Rush).

Marnie (Alfred Hitchcock's film about a kleptomaniac) and *Louis Theroux in San Quentin* (2008 BBC documentary) are highly recommended.

SYLLABUS

I. INTRODUCTION TO PSYCHOANALYTIC THEORY: *Infantile Sexuality, The Unconscious, the Superego, and the Defense Mechanisms.*

1. “Two Fundamental Hypotheses”: Determinism and the Unconscious, Chapter 1 in *An Elementary Textbook of Psychoanalysis*, by Brenner.
2. Infantile Sexuality: Chapter 2 in Brenner.
3. Id, Ego, and Superego, Chapter 3 in Brenner.
4. The Ego’s Struggle to Master the External Environment and the Internal Impulses and Wishes, Chapter 4 in Brenner.
5. The Oedipus Complex and Formation of the Inner Moral Voice, pages 62-86 in Brenner.
6. The Defense Mechanisms of the Ego, pages 87-105 in Brenner.
7. “Psycho-pathology” Chapter 8 in Brenner.
8. The Talking Cure: Episodes from the HBO series *In Practice* and *Ordinary People*, to be shown in class.
9. Review and Synopsis: “Sigmund Freud and the Classical Psychoanalytic Tradition,” Chapter 1 in *Freud and Beyond*, by Stephen A. Mitchell and Margaret J. Black, on electronic reserve.
10. But Isn’t Psychoanalysis Dead? Fred Gutierl, “What Freud Got Right,” *Newsweek* (Nov. 11, 2002); Jerry Adler, “Freud in our Midst,” *Newsweek* (March 27, 2006); Thomas Nagel, “Freud’s Permanent Revolution,” *The New York Review of Books*, vol. 41, #9, (May 12, 1994), on electronic reserve.

Recommended:

Otto Fenichel, *The Psychoanalytic Theory of Neurosis*
Juliet Mitchell, *Psychoanalysis and Feminism*
Nancy McWilliams, *Psychoanalytic Diagnosis*

II. CRIME, LAW, AND SOCIETY: PSYCHOANALYTIC PERSPECTIVES

A. THE PSYCHO-DYNAMICS OF CRIMINAL BEHAVIOR

STEALING

11. "Introduction" and "The Victim of Loyalty," in *Roots of Crime: Psychoanalytic Studies*, by Franz Alexander and William Healy.
12. "The Undetected Shoplifter," *Roots of Crime*.
13. "A Favorite of Women," *Roots of Crime*.
14. "The Solitary Offender," and "The Interplay of Social and Psychological Factors," *Roots of Crime*.
15. "The Case of Rashid. Purloined Letters: The Psychoanalysis of a Man Who Stole Books," in *Errant Selves*, edited by Arnold Goldberg, on electronic reserve.

Recommended:

Marnie (dir. Hitchcock, 1964) (about a kleptomaniac whose husband, played by Sean Connery, tries to help her overcome her impulse to steal).

August Aichhorn, *Wayward Youth*

HOMICIDE

16. "Introduction" and "Peter," in *The Deadly Innocents: Portraits of Children Who Kill*, by Muriel Gardiner.
17. "Neurotic Crime vs. Criminal Behavior," in *Basic Problems of Ethnopsychiatry*, by George Devereux, on electronic reserve; and "Gloria," in *The Deadly Innocents*.

18. "Fred and Marilyn" and "Tom," in *The Deadly Innocents*.
19. "Rose," in *The Deadly Innocents*; and "Jake" in Leslie Bennetts, "The Seeds of Violence," in *Vanity Fair*, volume 52, #3 (March, 1989), p. 156, on electronic reserve.

B. THE HIDDEN GRATIFICATIONS OF PENAL CONFINEMENT

20. "Cradled on the Sea: Positive Images of Prison and Theories of Punishment," in *Romantic Outlaws, Beloved Prisons*, by Martha Grace Duncan, first paragraph on page ix; and pages 1-31.
21. "Cradled on the Sea," pages 32-56 of *Romantic Outlaws*.
22. Movie: *The Shawshank Redemption* to be seen in class.

Recommended:

Louis Theroux in San Quentin (BBC Documentary, 2008).

Otto Fenichel, Chapter on "Depression and Mania," in *The Psychoanalytic Theory of Neurosis* (for a clear explanation of impulse neurosis).

C. THE FUNCTIONS OF CRIMINALITY FOR LAW-ABIDING PEOPLE

23. "A Strange Liking: Our Admiration For Criminals," in *Romantic Outlaws, Beloved Prisons*, page 57-top of 60 and pages 64-90.
24. "A Strange Liking," pages 90-108.
25. "A Strange Liking," pages 108-118.
26. Movie: *Les Miserables* (1998 version with Liam Neeson and Geoffrey Rush), to be seen in class.
27. "In Slime and Darkness: The Metaphor of Filth in Criminal Justice," in *Romantic Outlaws, Beloved Prisons*, pages 119-140.
28. "In Slime and Darkness," pages 147-179.

29. “In Slime and Darkness,” and “Conclusion,” pages 179-193.

Recommended Reading:

Daphne du Maurier, *Jamaica Inn*.

Robert Hughes, *The Fatal Shore*.

Ruth Munroe, “The Anal State,” in *Schools of Psychoanalytic Thought*, pages 194-98.

III. THE LAWYER AS HERO AND VILLAIN: AMBIVALENCE TOWARD LAWYERS IN SOCIETY

30. Harper Lee, *To Kill a Mockingbird*

31. Dickens’ Lawyers

Great Expectations [Jaggers and Wemmick], chapters 18, 20, and 21

Bleak House [Tulkinghorn and Vholes], chapters 2, 10, 22, 39, 48

A Tale of Two Cities [Sidney Carton], book 2: 3, 5; book 3: 13,15.

Recommended Reading:

Leonard Manheim, “The Law as ‘Father’: An Aspect of the Dickens Pattern, University of Hartford Studies in Literature, vol. 9 (1977).