

PHIL 609B: Philosophy of Criminal Law

Spring 2021

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Office Hours: Thursday, 1:00 – 3:00 PM

Zoom links posted on myCourses.

Course Description

The course will take up foundational issues raised by the criminal law, both municipal and international. We will be concerned not only with the justification of state punishment (should such justification be possible), but also with questions of process, authority, responsibility, jurisdiction, and equity, especially where those matters intersect with contemporary legal practice and the politics of criminalization. Given that the criminal law currently comprises a large part of the state's coercive apparatus, we will also be addressing basic questions of state sovereignty and political legitimacy.

Objectives

Students will:

- Be familiar with some of the central philosophical work on punishment, criminal process, and criminalization
- Be able to explicate the basic concerns that have driven philosophers to write on problems of the criminal law
- Develop and be able to articulate cogent and defensible views on these topics
- Improve ability to write analytical papers
- Develop an ability to read and critically consider difficult texts
- Improve ability to reason through and intelligently discuss complex philosophical problems generally

Readings

As a graduate seminar, there will be a focus on in-class discussion rather than lecture. Careful and reflective reading of the texts prior to our meetings, then, is essential. Most of readings will be available on electronic reserves, or through the library website. The one required text for purchase is:

David Boonin, *The Problem of Punishment* (Cambridge, 2008)

Requirements

Grade Breakdown:

Paper	60%
Participation	20%
Presentation	20%

Participation: Regular and informed participation on the part of everyone is essential. A part of your grade will be based on your contributions in seminar: the grade will be based on the frequency and quality of your verbal contributions to the class. Such contributions include informed responses to my questions, participation in classroom discussions, responding to your peers, and raising relevant and cogent questions.

Presentation: Each student will present on some aspect of an assigned reading for the course. The presentation should contextualize some important line of reasoning (what is the theoretical point of the argument, and how does it relate to other related positions), explicate the line of reasoning, offer a critical assessment of some aspect of the author's position, and coordinate the in class discussion surrounding the presentation. The presentation should take between fifteen and twenty five minutes.

Paper: The paper assignment is a two stage process. Stage One is writing the best 15 to 20 page draft you are able. I will then provide you with feedback on your draft. Stage Two is revising the draft to produce the best final draft you are able.

Course Policies

Attendance: Attendance in class is mandatory. Each unexcused absence beyond one will result in a 1/3 letter grade reduction in the final grade.

Academic Honesty: Plagiarism and other forms of academic misconduct will be dealt with harshly in accordance with SPEL policies. At minimum, the student will fail the course. See the SPEL Handbook for a description of official policy.

Papers Drafts: Drafts are to be submitted electronically, by email. When I receive a paper draft, I will confirm with an email.

Schedule of Readings

The following plan is subject to revision – I will let you know of any changes as we go. Listed on the left are the dates of the meetings, on the right are the readings that will be discussed on those dates.

Date	Reading
Feb. 16	Introductory Meeting: the idea of the criminal law; some realities of its practice 1. Michael Moore, “Justifying Retributivism” <i>Israel Law Review</i> (1993)
Feb. 23	Due Process I 1. Christopher Heath Wellman, “Procedural Rights” <i>Legal Theory</i> (2014) 2. David Enoch, “In Defense of Procedural Rights (or anyway, procedural duties): a response to Wellman” <i>Legal Theory</i> (2018) 3. N.P. Adams, “Grounding Procedural Rights” <i>Legal Theory</i> (2019)
Mar. 2	Due Process II 1. Reeves, “The Moral Claim to Legal Process” [Draft] 2. Larry Laudan, “The Rules of Trial, Political Morality, and the Costs of Error: Or, Is Proof Beyond a Reasonable Doubt Doing More Harm than Good?” <i>Oxford Studies in Philosophy of Law I</i> (2011) 3. Alec Walen, “Proof Beyond a Reasonable Doubt: A Balanced Retributive Account” <i>Louisiana Law Review</i> (2015)
Mar. 9	Consequentialism on Punishment 1. Boonin, <i>The Problem of Punishment</i> , 1-84 2. Charles Goodman, “Punishment” from <i>Consequences of Compassion</i> (2009) 3. Goodman, “Why Would Two-Level Consequentialism Punish Only the Guilty?” <i>Criminal Justice Ethics</i> (2017)
Mar. 16	Retributivism! 1. Richard Dagger, “Playing Fair with Punishment” <i>Ethics</i> (1993) 2. Christopher Heath Wellman, “The Rights Forfeiture Theory of Punishment” <i>Ethics</i> (2012) 3. Boonin, 85-154
Mar. 23	Retributivism+/Expressivism 1. Jean Hampton, “Righting Wrongs: The Goal of Retribution” in <i>The Intrinsic Worth of Persons</i> (2007) 2. R.A. Duff, selections from <i>Punishment, Communication, and Community</i> (2001)
Mar. 30	Abolitionism 1. Boonin, 155-275
Apr. 6	Self-Defense/The Duty View; Criminal law ideal theory as ideology? 1. Selections from Victor Tadros, <i>The Ends of Harm</i> (2011) [Available electronically through library.] 2. Alice Ristroph, “The Curriculum of the Carceral State” <i>Columbia Law Review</i> (2020)

Apr. 13	Systemic Disadvantage and Criminal Process <ol style="list-style-type: none"> 1. Tommie Shelby, "Justice, Deviance, and the Dark Ghetto" <i>Philosophy & Public Affairs</i> (2007) 2. Christopher Lewis, "Inequality, Incentives, Criminality, and Blame" <i>Legal Theory</i> (2016) 3. Benjamin Yost, "What's Wrong with Differential Punishment" <i>Utilitas</i> (2016)
Apr. 20	University Rejuvenation Day
Apr. 27	Criminalization: Uses and Abuses; Some General Principles <ol style="list-style-type: none"> 1. Christopher Lewis, "The Paradox of Recidivism" <i>Emory Law Journal</i> (2021) 2. Selections from Doug Husak, <i>Overcriminalization</i> (2008) 3. Patrick Tomlin, "Retributivists! The Harm Principle Is Not for You!" <i>Ethics</i> (2014) Initial Paper Draft Due
May 4	Criminalization: Legal Moralism <ol style="list-style-type: none"> 1. Selections from R.A. Duff, <i>The Realm of the Criminal Law</i> (2018)
May 11	International Criminal Law: By What Right? <ol style="list-style-type: none"> 1. David Luban, "Fairness to Rightness: Jurisdiction, Legality, and the Legitimacy of International Criminal Law" <i>Phil of Int Law</i> (2010) 2. R.A. Duff, "Authority and Responsibility in International Criminal Law" <i>Phil of Int Law</i> (2010) 3. Reeves, "Liability to International Prosecution: The Nature of Universal Jurisdiction" <i>European Journal of International Law</i> (2017) Paper Draft Returned w/ Comments
May 18	International Criminal Law: Ok, fine (maybe), but is it worth it? <ol style="list-style-type: none"> 1. Colleen Murphy, "Political Reconciliation and International Criminal Trials" <i>Int Crim Law and Philosophy</i> (2010) 2. Reeves, "Impunity and Hope" <i>Ratio Juris</i> (2019)

Final papers due at 5 PM, Thursday, May 25