GOVERNMENT 94EM: CRIME, RESPONSIBILITY, & THE LAW
Harvard University
Spring 2020

[Draft syllabus updated 1/20/2020; subject to revision]

Instructor: Gabriel Katsh, PhD
Lecturer, Department of Government
Email: katsh@fas.harvard.edu
Office hours: sign up online at bit.ly/GabeKatsh

Meeting Time and Location: Mondays, 3-5pm, in CGIS K-401.

Enrollment and First Meeting: To enroll in the class, you must enter the Government Department lottery (see https://undergrad.gov.harvard.edu/gov-94-seminars) by submitting a hard-copy lottery form to the Department’s undergraduate office by 6pm on Wednesday, January 29th. Lottery results will be released on Thursday, January 30th.

All interested students should attend the first course meeting on January 27.

Overview

One of the central questions of any political system is how to respond to those who violate the legally enforced norms of behavior that make up the criminal law. In this seminar, we will consider the philosophical justifications that have been given for the operation of the criminal justice system and, in particular, for the practice of punishing offenders. We will focus on the contrasting ideologies of retributivism and consequentialism and how those systems address moral principles such as responsibility, agency, blame, and desert as well as more practical concerns such as deterrence and public safety. Readings will be drawn from a wide range of sources, primarily political theory and law, but also the philosophy of mind, sociology, history, and neuroscience.

Further Notes about the Scope of the Course and its Goals

Despite its title, this course is neither primarily about criminology—the study of the nature, causes, and prevention of crime (about which you can take courses in the Sociology Department)—nor about the substantive doctrines surrounding the operation of the criminal law (which you can study in law school). Rather, it is about the philosophical underpinnings of criminal law and the practice of punishment. Providing a normative justification for the operation of the institution of criminal punishment requires, in turn, addressing some of the most profound questions about human behavior: In what sense are we free? Are we truly responsible for our actions? Do people deserve what comes to them? Does that matter? Should we separate out ideas about desert and blame from the operation of criminal punishment? It also requires considering the nature of the social institution that is public law: What should be outlawed? Are we morally required to follow the law? Are some laws so unjust that the only right thing to do is to break them? Our goal in this course is to think through many of these difficult questions in a logical manner, to question our intuitions about the correct answers, and to consider how experts in a variety of fields have grappled with addressing these profound issues.
Requirements and Grading

As this is a seminar, the main requirements are to come to class prepared, having done the required reading, and to participate actively in class discussions.

For 5 out of the 12 weeks, you are expected to write short response papers to the readings (approximately 400-600 words) that will be circulated among the class (via Canvas). These responses are due 24 hours before class meets to allow your fellow students and the instructor to read and reflect on them. They will be graded on a √, √+, √- scale.

You are also required to attend the instructor’s office hours at least once by the 6th week of the course. This is an opportunity for both you and the instructor to get to know each other better and to discuss any course-related issues that are on your mind.

Your participation in class (which includes completing the short response papers and attending at least one office-hours session) will count for 40% of your final grade.

There will be a short midterm quiz on April 6th to evaluate your understanding of the philosophical issues covered in class, which will count for 20% of your final grade. The remaining 40% of your grade will be determined by a seminar paper (approx. 15-20 pages) on a topic related to the course material, to be chosen in consultation with the instructor. A short (1-2 page) paper proposal is due to the instructor by the last day of class (April 27th), and the paper itself is due during exam period (date to be determined by the FAS Registrar’s Office).

Absences

Because of the seminar format, there is no way to make up a missed class, and since we only meet 12 times throughout the semester, your attendance at all course meetings is crucial. In light of the fact that everyone has multiple outside commitments and sometimes conflicts are unavoidable, each student is allowed to miss one class, no questions asked, without penalty. To avail yourself of this option, you must email the instructor at least 4 hours before class begins to say that you won’t be attending that day.

Additional absences will be excused only in emergency situations (e.g., hospitalization) and will require documentation. Otherwise, they will result in significant grade deductions.

Feedback about the Course

This is the first time this class is being offered, and your constructive feedback is very welcome! You will have a chance to complete mid-semester evaluations of the course, but you are welcome to contact the instructor anytime with suggestions about readings, course discussions, or anything else on your mind. Although not all suggestions can be implemented while the course is underway, they will all be given due consideration and may be implemented in future iterations of the course.
Collaboration Policy

Discussion and the exchange of ideas are essential to academic work. For assignments in this course, you are encouraged to consult with your classmates on the choice of paper topics and to share sources. You may find it useful to discuss your chosen topic with your peers, particularly if you are working on the same topic as a classmate. However, you should ensure that any written work you submit for evaluation is the result of your own research and writing and that it reflects your own approach to the topic. You must also adhere to standard citation practices and properly cite any books, articles, websites, lectures, etc. that have helped you with your work. If you received any help with your writing (feedback on drafts, etc.), you must also acknowledge this assistance. Please speak with the instructor if you have any questions about collaboration.

Course Readings

The readings for this course come from a variety of sources: political theory, judicial cases, the philosophy of mind, and neuroscience, among others. The readings have been chosen to stimulate discussion and encourage you to critically examine your own views. None is intended to convince you to adopt a particular stance on any issue of debate (nor, for that matter, does the instructor necessarily agree with the views put forth).

To minimize costs to students, there are no required books to purchase. All of the required readings are available online, either through the course Canvas site or through Hollis. Please bring the readings to class with you.

Because you may be interested in learning more about the criminal justice system generally, the following textbook has been placed on reserve at Lamont Library. This is optional reading, and the course will not presuppose or test any of the material contained in it that isn’t separately covered in class:


Summary of Topics to be Covered

Week I: Introduction [Jan 27]
Week III: What Should be Criminal? Part II: Criticisms and Limits of the Harm Principle and Liberal Neutrality [Feb 10]
*No class on Feb 17th (Presidents’ Day – University Holiday)*
Week IV: Is There a Moral Duty to Obey the Law? [Feb 24]
Week V: Guilty Acts, Guilty Minds, and Other Elements of Crimes [March 2]
Week VI: Responsibility and the Debate over Free Will [March 9]
*No class on March 16 (Spring Break)*
Week VII: Responsibility and Desert [March 23]
Week VIII: Justifying Punishment [March 30]
Week IX: Neuroscientific Perspectives on Free Will, Determinism, and Criminal Responsibility [April 6]
Week X: Excuses and Justifications [April 13]
Week XI: Fair Punishments: Proportionality, Equality, Justice [April 20]
Week XII: Topic to be Determined Based on Course Members’ Interests [April 27]

Schedule of Topics and Readings

Week I: Introduction

Required Reading: None.

Recommended Reading:


Week II: What Should be Criminal? Part I: The Harm Principle and Liberal Neutrality

Required Reading:


Recommended Reading:


Week III: What Should be Criminal? Part II: Criticisms and Limits of the Harm Principle and Liberal Neutrality

Required Reading:

Aristotle, _Nicomachean Ethics_, Book X, §9; _Politics_, Book I, Ch. 1-2, & Book III, Ch. 9.


Recommended Reading:


Week IV: Is There a Moral Duty to Obey the Law?

Required Reading:

John Locke, _Second Treatise of Government_, excerpt.

Baron de Montesquieu, _The Spirit of the Laws_, Book XI, §§1-3.

Martin Luther King, Jr. _Letter from a Birmingham Jail_, excerpt.

Henry David Thoreau, _Civil Disobedience_, excerpt.


**Recommended Reading:**


**Week V: Guilty Acts, Guilty Minds, and Other Elements of Crimes**

**Required Reading:**


**Week VI: Responsibility and the Debate over Free Will**

**Required Reading:**


**Recommended Reading:**


**Week VII: Responsibility and Desert**

*Required Reading:*


*Recommended Reading:*


**Week VIII: Justifying Punishment**

*Required Reading:*


**Recommended Reading:**


**Week IX: Neuroscientific Perspectives on Free Will, Determinism, and Criminal Responsibility**

*Required Reading:*


**Recommended Reading:**


**Week X: Excuses and Justifications**

*Required Reading:*


*The Queen v. Dudley and Stephens*, 14 Q.B.D. 273 (1884), excerpt


*People v. Fontes*, 89 P.3d 484 (Colo. App. 2004), excerpt

Garrett Epps, “Does the Constitution Guarantee a Right to an Insanity Defense?” *The Atlantic*, October 6, 2019. [https://www.theatlantic.com/ideas/archive/2019/10/question-heart-kahler-v-kansas/599497/](https://www.theatlantic.com/ideas/archive/2019/10/question-heart-kahler-v-kansas/599497/). [Note: This article covers the case *Kahler v. Kansas*, currently before the U.S. Supreme Court. This reading may be adjusted depending on when the Supreme Court releases its opinion in the case.]

*Recommended Reading:*


**Week XI: Fair Punishments: Proportionality, Equality, Justice**

*Required Reading:*

Aristotle, *Nicomachean Ethics*, Bk V, §10. (Also review *Politics*, Bk 3, ch. 9, assigned earlier.)


Recommended Reading:

Lockyer v. Andrade, 538 U.S. 63 (2003), excerpt


Week XII: To be Determined Based on Course Members’ Interests