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 4 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 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, 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 14 times throughout the semester, your attendance at all course meetings is important. 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**

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 have the readings accessible when you attend class.

**Summary of Topics to be Covered**

Week I: Introduction [Shopping Week]
Week II: What Should be Criminal? Part I: The Harm Principle and Liberal Neutrality
Week III: What Should be Criminal? Part II: Criticisms and Limits of the Harm Principle and Liberal Neutrality
Week IV: Is There a Moral Duty to Obey the Law?
Week V: Guilty Acts & Guilty Minds
Week VI: Responsibility and the Debate over Free Will
Week VII: Responsibility and Desert
Week VIII: Neuroscientific Perspectives on Free Will, Determinism, and Responsibility
Week IX: Justifying Punishment: Retributivism
Week X: Justifying Punishment: Consequentialism & Mixed Theories
Week XI: The Claim of Necessity as a Defense
Week XII: Excuses and the Insanity Defense
Week XIII: Fair Punishments: Proportionality, Equality, Justice
Week XIV: Topic to be Determined Based on Course Members’ Interests
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:


Martin Luther King, Jr. Letter from a Birmingham Jail, excerpt.

Henry David Thoreau, Civil Disobedience, excerpt.


Recommended Reading:


Week V: Guilty Acts and Guilty Minds

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: Neuroscientific Perspectives on Free Will, Determinism, and Responsibility

Required Reading:


Recommended Reading:


Week IX: Justifying Punishment: Retributivism


Recommended Reading:


Week X: Justifying Punishment: Consequentialism and Mixed Theories

Required Reading:


Recommended Reading:


Week XI: The Claim of Necessity as a Defense

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

Recommended Reading:


Week XII: Excuses and the Insanity Defense

Required Reading:


Kahler v. Kansas (2020), excerpt

Recommended Reading:


Week XIII: 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 XIV: To be Determined Based on Course Members’ Interests