

**Philosophy of Law:
The Justification of Punishment
Course Syllabus**

Instructor:

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I Course Description

This course examines a wide range of philosophical theories of punishment, paying close attention to what these theories presume about human agency and moral responsibility.

II Format

1. **Reading Assignments:** The readings will come from three sources: (a) *Justifying Legal Punishment*, by Igor Primoratz, (**JLP**) (b) *Punishment*, edited by A. J. Simmons, M. Cohen, J. Cohen, and C. Beitz (**PPA**) (both texts are available in the University bookstore), and (c) handouts and texts posted on the course website.
2. **Writing Assignments:** One paper, 8-10 pages in length, due on the last day of class.
3. **Exams:** One take-home midterm and one take-home final.
4. **Presentations:** Each student will do one class presentation applying the theories we study in class to a real case.
5. **Class Participation.** This course is taught as a seminar and so active participation is essential. Please read all assignments before class, and come prepared to discuss them. If I get the sense that students are not doing the reading, I will institute an “unannounced quiz” policy as a deterrent. Please don’t make me have to do this.
6. **Attendance Policy:** Regular class attendance is crucial to avoid falling behind. Only two unexcused absences are permitted. The third absence will knock you down on borderline final grades (if you’re on the border of B+/A- you’ll get a B+). Every unexcused absence after this will reduce your final grade by half a grade (B- to C+, etc). More than six and you fail the course. *You are responsible for signing the attendance sheet.* Excused absences due to illness require a note from student health. Other excuses will be assessed on a case by case basis. Coming in more than fifteen minutes late counts as an absence (unless you have a good excuse). If you come in less than fifteen minutes late, and manage to sign the attendance sheet, you’ll be counted as present. But if this happens too often, I’ll notify you that future tardiness will count as being absent.

III Grading

Take home midterm: 20%

Take home final: 20%

Presentation: 15%

Final paper: 30%

Class Participation (or unannounced quizzes) 15%

IV Readings (subject to plenty of revision)

The date for each assignment will be posted on the course website.

I Introduction

- JLP, Chapter 1.
- Legal Punishment (Stanford Encyclopedia Entry).

II Consequentialism and Retributivism

- Bentham Selections From “The Principles of Morals and Legislation.”
- JLP. Chapter 2-5
- Hart. “Punishment and Responsibility”
- JLP Chapter 6, 7
- Murphy, “Marxism and Retribution.” (PPA)
- Morris. “Persons and Punishment.”
- Davis, “Harm and Retribution.” (PPA)
- Burgh. “Do the Guilty Deserve Punishment?”
- Nussbaum. “Equity and Mercy.” (PPA)

III Other Theories of Punishment.

- Feinberg. “The Expressive Function of Punishment.”
- Nino, “A Consensual Theory of Punishment.” (PPA)
- Hampton. “A Moral Education Theory of Punishment.” (PPA)

IV Moral Responsibility.

- Nagel. “Moral Luck.”
- Strawson, “Luck Swallows Everything.”
- Watson. “Responsibility and the Limits of Evil.”

V Agency, Intention, and the Retributive Emotions

- Daly and Wilson. “Retaliation and Revenge” *Homicide*. (selections.)
- Mackie, “Morality and the Retributive Emotions.”
- Malle and Nelson. “Judging Mens Rea.”
- John Monterosso, Edward B. Royzman, Barry Schwartz, "Explaining away responsibility: Effects of scientific explanation on perceived culpability."
- Greene and Cohen. “For the Law Neuroscience Changes Everything and Nothing.”

VI The Nature of Law

- Hart, “Positivism and the Separation of Law and Morals.”
- Hart, “Law as the Union of Primary and Secondary Rules.”
- Dworkin. “The Model of Rules.”
- Dworkin. “Natural Law Revisited.”

VII Applying the Theories: Capital Punishment

- Conway, “Capital Punishment and Deterrence.” (PPA)
- Reiman, “Justice, Civilization, and the Death Penalty.” (PPA)
- Van Den Haag, “Refuting Reiman and Nathanson.” (PPA)