

The Policy of Crime and Punishment

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Office hours: Wed 9 -11:30 and by appointment

(I am usually in my office and appointments can be made on short notice by blitz.)

This course will examine the theory and policy of criminal justice and punishment from philosophical, legal, and criminological perspectives. It will take up, among others, the following questions: What is the moral basis for taking the liberty or life of another human being as punishment? Must the punishment be deserved? How is desert determined? Must the offender receive the deserved penalty even if that penalty would make no contribution to the control of crime? Is it sufficient justification for a given sentence that the defendant knew or could easily have known the approximate penalty before deciding to commit the offense? Has the Eighth Amendment limitation on the severity of punishments been properly interpreted? Does justice require further limitations? Does justice require that there be lower limits on the severity of punishment for certain serious offenses? Is chemical castration morally and constitutionally permissible? Is it good policy? How do the new deterrence studies affect the morality and policy of capital punishment? Why may we punish attempts and conspiracies that cause no harm? Should predictions of future dangerousness enter into sentencing decisions? If we had a perfect predictor of dangerousness, could we substitute that for the criminal justice system? Is it just to give a defendant a longer sentence for purposes of rehabilitation? What is the correlation between rehabilitation and recidivism? What implications are there for theory and practice that a real world adjudication system will always make some mistakes, and, in particular, that some innocent people will be convicted and punished? How should sentencing authority be divided among judges, legislators, and commissioners? Are sentencing guidelines just?

Many of the readings were written for professional philosophers, economists, or criminologists. You will want to read them slowly and carefully and return to the difficult parts more than once. If technical vocabulary or methodology is preventing you from following the argument of a piece, feel free to blitz me with the problem.

The course will require a substantial paper involving research and analysis. The length should be 25 to 40 pages. The purpose of the papers is to bring students very near to the state of the art on a focused issue in punishment policy. Although student interests will control topic selection, I will seek a balance between primarily theoretical and primarily empirical issues. Students will do very short presentations in class in the early stage of development of their papers and a 15 minute defense of it when it is substantially completed. The class will read drafts of the presented papers in advance, so that the class time can be devoted to questions and discussion.

Grading will be based 70% on the final paper; 20% on class presentation; 10% on class participation.

- Week 1 Plato, *Protagoras* Online <http://etext.library.adelaide.edu.au/mirror/classics.mit.edu/Plato/protagoras.html>; Protagoras' creation myth speech, about 5 pages.
Aquinas, from *Summa Theologica* Treatise of Law from "Of the Essence of Law" through "Of Changes in the Law" Treatise on Habits, Of the Debt of Punishment, Points 1 and 7. Online., approximately 44 pages total,
Kant *The Metaphysical Elements of Justice*, Ladd tr. Pp.100-108.
Bentham, from *An Introduction to the Principles of Morals and Legislation* chs. 13 and 14, on Blackboard about 13 pages.
- Week 2 W.D. Ross, from *The Right and the Good* pp. 60-65.
H.L.A. Hart, "Prolegomenon to the Principles of Punishment"
Proceedings of the Aristotelian Society 1-26.
Crocker, "Two Paradigms of Punishment," unpublished, 26 pp.
- Week 3 Morris, "Persons and Punishments," 53 *The Monist*, 475-501(1968)"
Sher, from *Desert* 1989, 80-87.
Goldman "The Paradox of Punishment" 9 *Philosophy and Public Affairs*, 42-55;
Wood, "Retribution, Crime Reduction, and the Justification of Punishment" 22 *Oxford Journal of Legal Studies* 301-321 (2002).
- Week 4 Robinson, "Competing Conceptions of Modern Desert: Vengeful, Deontological, and Empirical" Penn Law Preprint 1-14
Huigens, "Dignity and Desert in Punishment Theory" 27 *Harv. J. of Law and Public Policy* 33-50.
Brown, "What Virtue Ethics Can Do for Criminal Justice: A Reply to Huigens," 37 *Wake Forest Law Review* 29-50 (2002).
- Week 5 Harel and Siegel, "Criminal Law and Behavioral Law and Economics: Observations on the Neglected Role of Uncertainty in Detering Crime," 15 *Berkeley Program in Law & Economics, Working Paper Series* 1-39.
Solem v. Helm 463 U.S. 277-318 (1983)
Lockyer v. Andrade, 538 U.S. 63-83 (2003)
- Week 6 Lippke, "Crime Reduction and the Length of Prison Sentences," 24 *Law and Policy* 17-34. (2002)
Kleck, Sever, Li, Gertz . The Missing Link in General Deterrence Research," 43 *Criminology* 623-660. (2005)
- Shichor, "Penal Policies at the Threshold of the 21st Century" 25 *Criminal Justice Review* 1-24 (2000)

Andrews, Zinger, Hoge, Bonta, Bedreque, Cullen "Does Correctional Treatment Work" A Clinically Relevant and Psychologically Informed Meta-Analysis" 28 Criminology 369-401.
Cullen, Twelve People Who Saved Rehabilitation: How the Science of Criminology Made a Difference, 43 Criminology 1-42
Logan and Gaes, "Meta-Analysis and the Rehabilitation of Punishment," 10 Justice Quarterly 245-263.

- Week 7 Sentencing Fairness and Equity Restoration Bill (in whatever form bill is in as of week 7)
Raeder, "Gender-Related Issues in a Post-Booker Federal Guidelines World" 37 McGeorge Law Review (through at least IV (p 14 in the pre-print draft)
- Week 8 Stinneford, "Incapacitation through Maiming: Chemical Castration, the Eighth Amendment, and the Denial of Human Dignity, Chemical Castration . . . "U of St. Thomas Legal Studies Research Paper No. 06-25 (2006) 1-36.
Feinstein, "Castration Works" <http://www.212.net/crime/castrate.htm>, about 4 pages
- Week 9 *Furman v. Georgia*, 408 U.S. 238, 238-240, 257-310 (Syllabus, Brennan conc.)
Gregg v. Georgia, 428 U.S. 153, 153-207 (Syllabus, Stewart)
Liebman, Fagan, West, Lloyd, Capital Attrition: Error Rates in Capital Cases, 1973-1995, 1973-1995. 78 Texas Law Review 1839-65.
- Week 10 Fagan, Zimring, and Geller, "Capital Punishment and Capital Murder: Market Share and the Deterrent Effects of the Death Penalty," Columbia Public Law Research Paper No. 06-121, pp. 1802-1845, 1859-60.
Sunstein, Vermeule "Is Capital Punishment Morally Required? The Relevance of Life-Life Tradeoffs" U Chicago Law & Econ, Olin Working Paper No. 239; 1-45.