

**Phil 279z – Punishment and Social Justice: Graduate Seminar
Fall 2011**

Emerson Hall 107, Tuesdays 2:00-4:00 pm

T. M. Scanlon, scanlon@fas.harvard.edu, office hours: Monday, 2:30-4 (Emerson 321)

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Course Description: The seminar will examine theories of punishment in the larger context of social justice questions. Some consideration will be given to recent empirical research on the relationship between crime, inequality, and incarceration in the United States.

Requirements: Two essays (each 10-12 pages) and one class presentation. First paper due October 31 and second paper due December 12. Prospectus for first paper (300 words) due October 18. Presentation dates to be arranged.

Students needing academic adjustments or accommodations because of a documented disability must present their Faculty Letter from the [Accessible Education Office](#) (AEO) and speak with the instructors by the end of the second week of the term (September 16). Failure to do so may result in the Course Heads' inability to respond in a timely manner. All discussions will remain confidential, although Faculty are invited to contact AEO to discuss appropriate implementation.

Schedule:

September 8: Introduction

September 13: Justifying the Practice (or Institution) of Punishment

- John Rawls, "Two Concepts of Rules" *Philosophical Review* 64 (1955): 3-32.
- H. L. A. Hart, "Prolegomena to the Principles of Punishment" in *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford: Oxford University Press, 1968), pp. 1-27.

Further Recommended Readings

- S. I. Benn, "An Approach to the Problems of Punishment," *Philosophy* 33 (1958): 325-341.

September 20: Threats and General Deterrence

- Daniel M. Farrell, "The Justification of General Deterrence," *The Philosophical Review* 94 (1985): 367-394.

- Erin Kelly, "Criminal Justice Without Retribution," *The Journal of Philosophy* 106 (2009): 440-462.

Recommended Further Readings:

- Warren Quinn, "The Right to Threaten and the Right to Punish," *Philosophy & Public Affairs* 14 (1985): 327-373.

September 27: Fairness and Reciprocity

- Herbert Morris, "Persons and Punishment," *Monist* 52 (1968): 475-501.
- Jeffrie Murphy, "Marxism and Retribution," *Philosophy & Public Affairs* 2 (1973): 217-243.

Recommended Further Readings:

- Richard W. Burgh, "Do the Guilty Deserve Punishment," *Journal of Philosophy* 79 (1982): 193-210. [For criticisms of Morris and Murphy.]
- George Sher, *Desert* (Princeton: Princeton University Press, 1987), chap. 5. [For an attempt to answer Burgh's criticisms.]
- Richard Dagger, "Playing Fair with Punishment," *Ethics* 103 (1993): 473-488. [For another attempt to address Burgh's criticisms and to defend the fair-play theory of punishment.]

October 4: Expressive and Communicative Functions of Punishment

- Joel Feinberg, "The Expressive Function of Punishment," *The Monist* 49 (1965): 397-423.
- R. A. Duff, *Punishment, Communication, and Community* (Oxford: Oxford University Press, 2001), chap. 3 (especially pp. 75-92, 106-115).

Recommended Further Reading

- Jean Hampton, "The Moral Education Theory of Punishment," *Philosophy & Public Affairs* 13 (1984): 208-238.

October 11: Consent and Forfeiture

- C. S. Nino, "A Consensual Theory of Punishment," *Philosophy & Public Affairs* 12 (1983): 289-306.
- T. M. Scanlon, "Punishment and the Rule of Law," in *The Difficulty of Tolerance: Essays in Political Philosophy* (New York: Cambridge University Press, 2003), pp. 219-233.
- Alan H. Goldman, "Toward a New Theory of Punishment," *Law and Philosophy* 1 (1982): 57-76.

Recommended Further Reading

- Christopher W. Morris, "Punishment and Loss of Moral Standing," *Canadian Journal of Philosophy* 21 (1991): 53-79.
- Daniel McDermott, "The Permissibility of Punishment," *Law and Philosophy* 20 (2001): 403-432.

October 18: Political Authority and State Punishment

- A. John Simmons, "Locke and the Right to Punish," *Philosophy & Public Affairs* 20 (1991): 311-349.
- Corey Brettschneider, "The Rights of the Guilty: Punishment and Political Legitimacy," *Political Theory* 35 (2007): 175-199.

Recommended Further Readings:

- Douglas N. Husak, "Why Punish the Deserving?" *Noûs* 26 (1992): 447-464.

October 25: Proportionality in Sentencing

- Alan Wertheimer, "Should Punishment Fit the Crime?" *Social Theory and Practice* 3 (1975): 403-423.
- Andrew von Hirsch, "Proportionality in the Philosophy of Punishment," *Crime and Justice* 16 (1992): 55-98.

November 1: Race, Class, and Crime: Who Gets Punished?

- Judith R. Blau and Peter M. Blau, "The Cost of Inequality: Metropolitan Structure and Violent Crime," *American Sociological Review* 47 (1982): 114-129.
- Andrew Karmen, "Poverty, Crime, and Criminal Justice," in *From Social Justice to Criminal Justice*, ed. William C. Heffernan and John Kleinig (New York: Oxford University Press, 2000), pp. 25-83.

Recommended Further Readings:

- Jeffrey Reiman, *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice, Eighth Edition* (Boston: Pearson, 2007), chap. 3.

November 8: Drug Offenses and Punishment

- Randall Kennedy, *Race, Crime, and the Law* (New York: Vintage, 1997), chap. 10.

- James Q. Wilson, "Drugs and Crime," *Crime and Justice* 13 (1990): 521-545.
- Douglas N. Husak, "Liberal Neutrality, Autonomy, and Drug Prohibitions," *Philosophy & Public Affairs* 29 (2000): 43-80.

Recommended Further Readings:

- Peter Reuter, "Hawks Ascendant: The Punitive Trend of American Drug Policy," *Daedalus* 121 (Summer, 1992): 15-52.
- Mark A. R. Kleiman, "Neither Prohibition Nor Legalization: Grudging Toleration in Drug Control Policy," *Daedalus*, 121 (Summer, 1992): 53-83.

November 15: Race, Class, and Mass Incarceration

- Bruce Western and Becky Pettit, "Incarceration and Social Inequality," *Daedalus* (2010): 8-19.
- Loic Wacquant, "Class, Race, and Hyperincarceration in Revanchist America," *Daedalus* (2010): 74-90.
- Mark A. R. Kleiman, "Toward Fewer Prisons and Less Crime," *Daedalus* (2010): 115-123.

Recommended Further Readings:

- Todd Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse* (New York: Oxford University Press, 2007), chap. 3.
- Glenn Loury, *Race, Incarceration, and American Values* (Cambridge: MIT Press, 2008), pp. 3-37.

November 22: Race, Class, and the Politics of Punishment

- Vesla M. Weaver, "Frontlash: Race and the Development of Punitive Crime Policy," *Studies in American Political Development* 21 (2007): 230-265.
- William J. Stuntz, "Unequal Justice," *Harvard Law Review* 121 (2008): 1969-2040.

Recommended Further Readings:

- Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press, 2007), chaps. 2-3.

November 29: Punishment, Ghetto Poverty, and Social Injustice

- Brian Barry, *Why Social Justice Matters* (Cambridge: Polity, 2005), chaps. 4 and 7.
- Tommie Shelby, "Justice, Deviance, and the Dark Ghetto," *Philosophy & Public Affairs* 35 (Spring 2007): 126-160.
- Paul Butler, *Let's Get Free: A Hip-Hop Theory of Justice* (New York: New Press, 2009), chap. 4.