

**Phil 288 – Punishment and Imprisonment: Graduate Seminar
Fall 2018**

Emerson Hall 310, Mondays 12:00-2:00 pm

Tommie Shelby, tshelby@fas.harvard.edu, office hours: Tuesdays 11am-1pm
(Barker 242)

Course Description: In this seminar, we will examine classic and recent philosophical theories of punishment with a focus on prisons. We'll critically discuss justifications of punishment based on deterrence, retribution, fairness, forfeiture, consent, and moral education. We'll also examine the case for and against carceral rehabilitation and incapacitation. Considerable attention will be given to assessing arguments for the abolition of incarceration as a form of punishment.

Prerequisites: This course is intended primarily for graduate students in philosophy. Graduate students in other disciplines or fields may take it for credit, but the course is recommended for only those students with significant background in philosophy (particularly in moral and political philosophy). Senior philosophy concentrators may petition for permission to enroll.

Requirements: Two essays (each approximately 10 pages or around 3000 words) and one brief (10 minute) class presentation. First paper is due October 26 and second paper is due December 12. Presentation dates to be arranged.

Students needing academic adjustments or accommodations because of a documented disability should present their Faculty Letter from the [Accessible Education Office](#) (AEO) and speak with the instructor by the end of the second week of the term (September 14). Failure to do so may result in the Course Head's inability to respond in a timely manner. All discussions will remain confidential, although Faculty are permitted to contact AEO to discuss appropriate implementation.

Schedule:

September 10: Introduction

September 17: 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.

Recommended Further Reading

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

September 24: Threats and General Deterrence

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

Recommended Further Reading:

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

October 1: Fairness and Desert

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

Recommended Further Reading:

- 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 8: No class (Columbus/Indigenous People's Day)

October 15: 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.

- Uma Narayan, "Appropriate Responses and Preventive Benefits: Justifying Censure and Hard Treatment," *Oxford Journal of Legal Studies* 13 (1993): 166-182.

October 22: Fairness and Consent

- 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.

October 29: Forfeiture and Rights

- Alan H. Goldman, "Toward a New Theory of Punishment," *Law and Philosophy* 1 (1982): 57-76.
- Christopher Heath Wellman, "The Rights Forfeiture Theory of Punishment." *Ethics* 122.2 (2012): 371-393.

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.

November 5: Punishment, Blame, and Responsibility

- Erin Kelly, *The Limits of Blame: Rethinking Punishment and Responsibility* (Harvard University Press, 2018), Introduction, Chaps. 4-5.

November 12: Prison Abolition, part 1

- Angela Y. Davis, *Are Prisons Obsolete?* (Toronto: Open Media, 2003).

November 19: Prison Abolition, part 2

- Allegra M. McLeod, "Prison Abolition and Grounded Justice." *UCLA L. Rev.* 62 (2015): 1156-1239.

November 26: Against the Abolition of Prisons

- Tommie Shelby, "The Uses and Abuses of Incarceration: Dehumanization, Slavery, and Profit" (author manuscript)

- Tommie Shelby, “The Limits of Functional Critique: Capitalism, Racism, and Political Repression” (author manuscript)

December 3: The Truth in Abolition

- Tommie Shelby, “Structural Reform and Crime Prevention,” (author manuscript)

Recommended Further Reading

- Tommie Shelby, *Dark Ghettos: Injustice, Dissent, and Reform* (Cambridge: Belknap Press, 2016), chap. 8.