

Philosophy of Law (PHIL10166): Semester 2 (2019-20)

Instructor: Professor Michael Cholbi

E-mail:

Office hours: Tuesday 4:15-5:15, Thursday 10:00-11:00, and by appointment (please contact me by e-mail to schedule an appointment)

Course description

States claim authority over those within their borders, including the right to punish those who break its laws. This course will investigate two central questions raised by this claim.

First, what (if anything) provides the basis of the putative obligation to obey the state's laws and directives? Here we consider several attempts to justify such *political obligation*, including duties of gratitude for the benefits the state provides, duties of fair play (i.e., to contribute to the provision of valuable cooperative goods), and the 'natural' duty to support just institutions or goals. We also critically engage two different versions of philosophical anarchism, which deny the existence of political obligations.

Second, what justifies the state's punishing those who break its laws? Here we consider answers resting on the desirable consequences of state punishment; on the deservedness of punishment; on the role of punishment in communicating society's disapproval of criminal conduct; on punishment's capacity to morally educate offenders; and on punishment serving as an act of collective self-defense. We also consider the implications that skepticism regarding free will has for the practice of punishment, in addition to David Boonin's proposal that providing restitution to crime victims represents a defensible alternative to traditional criminal punishment.

Teaching will occur Tuesdays 2:10-4:00, 4.02 - PPLS Computer Lab, Appleton Tower. The total commitment of hours for the course is 200: 22 Seminar/Tutorial Hours, 4 Programme Level Learning and Teaching Hours, and 174 Directed Learning and Independent Learning Hours 174.

This course will be taught in a seminar format, with the expectation that course meetings will be student-driven and discussion-oriented. Students are required to attend meetings and give the assigned materials a careful and critical read beforehand.

Learning outcomes

This course will provide students many opportunities to practice the core skills associated with philosophical inquiry, including the extraction, expression, and evaluation of arguments articulated in philosophical texts; the crafting of compelling and convincing philosophical prose; and the development of their own informed point of view on philosophical issues. In addition, by the conclusion of the course, students should be able to

- identify and appraise several prominent philosophical attempts to justify state authority
- identify and appraise several prominent philosophical attempts to justify the state's punishment of criminal conduct
- critically address skeptical stances on political authority (e.g., philosophical anarchism) and punishment (e.g., penal abolitionism)

Assessment

Mid-term essay, 1500 words (40%) – due Th 27 Feb, 12 pm

End-of-semester essay, 2500 words (60%) – due Th 23 April, 12 pm

(Extensions to these deadlines of up to seven days may be requested from the philosophy teaching office.)

Course content and schedule

As we will be reading nearly the entirety of D. Boonin, *The Problem of Punishment* (Cambridge University Press, 2008), I'd encourage you to acquire a copy of it. All other readings should be available as UoE library resources – but please let me know right away if you have trouble tracking down any particular text.

1 14 Jan

Political obligation: Outlining the problem; *A priori* anarchism

Core readings	Supplementary readings
<ul style="list-style-type: none">• Simmons, "Political Obligation and Authority," (in Simon, ed., <i>Blackwell Guide to Social and Political Philosophy</i>, 2002), pp.17-22• Gilbert, "Group Membership and Political Obligation," <i>The Monist</i> 76 (1993): 119-131.• Wolff, "The Conflict between Authority and Autonomy" (http://www.ditext.com/wolff/anarchy1.html)	<ul style="list-style-type: none">• Smith, "Political Obligation and the Self," <i>Philosophy and Phenomenological Research</i> 86 (2013): 347-75.

2 21 Jan

The Socratic defense of political obligation; gratitude (positive view #1)

Core readings	Supplementary readings
<ul style="list-style-type: none">• Plato, <i>Crito</i> (http://classics.mit.edu/Plato/crito.html)• Simmons, "Political Obligation and Authority," pp. 22-27• Walker, "Political Obligation and the Argument from Gratitude," <i>Philosophy and Public Affairs</i>, 17 (1988): 191–211	<ul style="list-style-type: none">• Smith, "Is There a Prima Facie Obligation to Obey the Law?" <i>Yale Law Journal</i> 82 (1973), pp. 950-53• Klosko, "Political Obligation and Gratitude," <i>Philosophy and Public Affairs</i> 18 (1989): 352-358• Simmons, <i>Moral Principles and Political Obligations</i> (1981), chapter 7

3 28 Jan

Fair play (positive view #2)

Core readings	Supplementary readings
<ul style="list-style-type: none">• Hart, "Are There Any Natural Rights?," <i>Philosophical Review</i> 64 (1955): 175-191.• Simmons, "The Principle of Fair Play?," <i>Philosophy & Public Affairs</i> 8 (1979):307-337.	<ul style="list-style-type: none">• Smith, "Is There a Prima Facie Obligation to Obey the Law?" pp. 954-60• Arneson, "The Principle of Fairness and Free-rider Problems," <i>Ethics</i> 92 (1982): 616-633.

4 4 Feb

Natural duties of justice (positive view #3)

Core readings	Supplementary readings
<ul style="list-style-type: none"> Waldron, "Special Ties and Natural Duties," <i>Philosophy & Public Affairs</i>, 22 (1993): 3-30 Simmons, "Justification and Legitimacy," <i>Ethics</i> 109 (1999): 739-771. Wellman, "Toward a Liberal Theory of Political Obligation," <i>Ethics</i> 111 (2001): 739-771. 	<ul style="list-style-type: none"> Greenawalt, "The Natural Duty to Obey the Law", 84 <i>Mich. L. Rev.</i> 1 (1985) (https://repository.law.umich.edu/mlr/vol84/iss1/2). Stilz, "Why Does the State Matter Morally?" In <i>Varieties of Sovereignty and Citizenship</i> (U Pennsylvania Press, 2012), pp. 244-64.

5 11 Feb

A posteriori philosophical anarchism

Core readings	Supplementary readings
<ul style="list-style-type: none"> Simmons, "Philosophical Anarchism," in his <i>Justification and Legitimacy</i> (Cambridge University Press, 2001), chapter 6 Edmundson, "Legitimate Authority without Political Obligation," <i>Law and Philosophy</i> 17 (1998): 43-60. 	<ul style="list-style-type: none"> Smith, "Is There a Prima Facie Obligation to Obey the Law?," pp. 969-76. Horton, <i>Political Obligation</i> (Macmillan, 2010), chapter 5. Huemer, <i>The Problem of Political Authority</i> (Palgrave Macmillan, 2013), chapter 7.

INSTRUCTIONAL BREAK: 18 Feb

6 25 Feb

Defining and delineating punishment; consequentialist solutions

Core readings	Supplementary readings
<ul style="list-style-type: none"> Hart, "Prolegomenon to the Principles of Punishment," <i>Proceedings of the Aristotelian Society</i>, n.s. 60 (1959 - 1960), pp. 1-26 Boonin, <i>The Problem of Punishment</i>, pp. 1-85 (feel free to skim pp. 1-23) 	<ul style="list-style-type: none"> Smilansky, "Utilitarianism and the 'Punishment' of the Innocent: The General Problem," <i>Analysis</i> 50 (1990): 256-61. Rawls, "Two Concepts of Rules," <i>Philosophical Review</i> 64 (1955): 3-32

7 3 Mar

Retributivist solutions, part I

Core readings	Supplementary readings
<ul style="list-style-type: none"> Cottingham, "Varieties of Retribution," <i>Philosophical Quarterly</i> 29 (1979): 238-46. Boonin, <i>The Problem of Punishment</i>, pp. 85-119 Murphy, "Marxism and Retribution," <i>Philosophy and Public Affairs</i> 2 (1973): 217-243. 	<ul style="list-style-type: none"> Moore, "The Moral Worth of Retribution," In Schoeman (Ed.), <i>Responsibility, Character, and the Emotions: New Essays in Moral Psychology</i> (1988). pp. 179-219. Wellman, "The Rights Forfeiture Theory of Punishment," <i>Ethics</i> 122 (2012): 371-393.

8 10 Mar

Retributivist solutions, part II; ‘quarantine’ as a non-retributivist alternative?

Core readings	Supplementary readings
<ul style="list-style-type: none"> • Boonin, <i>The Problem of Punishment</i>, pp. 119-143 • Morris, “Persons and Punishment,” <i>The Monist</i> 52 (1968), pp. 475-501. • Caruso, “Free Will Skepticism and Criminal Behavior: A Public Health-Quarantine Model,” <i>Southwest Philosophy Review</i> 32 (2016): 25-48. 	<ul style="list-style-type: none"> • Dagger, “Playing Fair with Punishment,” <i>Ethics</i> 103 (1993):473-88. • Cederblom, “The Retributive Liability Theory of Punishment,” <i>Public Affairs Quarterly</i> 9 (1995): 305-315. • Tadros, “Punishment and Duty” (chapter 12 of <i>The Ends of Harm</i> (2011)) • Corrado, “Criminal Quarantine and the Burden of Proof,” <i>Philosophia</i> 47 (2019): 1095-1110.

9 17 Mar

The communicative/reprobative theory

Core readings	Supplementary readings
<ul style="list-style-type: none"> • Boonin, <i>The Problem of Punishment</i>, pp. 155-180 • Feinberg, “The Expressive Function of Punishment,” <i>The Monist</i> 49 (1965): 397-423. 	<ul style="list-style-type: none"> • Duff, <i>Punishment, Communication, and Community</i> (1986), chapter 3. • Davis, “Punishment as Language: Misleading Analogy for Desert Theorists,” <i>Law and Philosophy</i> 10 (1991): pp. 311-322.

10 24 Mar

Moral education and self-defense

Core readings	Supplementary readings
<ul style="list-style-type: none"> • Boonin, <i>The Problem of Punishment</i>, pp. 180-207 • Hampton, ‘The Moral Education Theory of Punishment’, <i>Philosophy and Public Affairs</i>, 13 (1984): 208–38. • Quinn, “The Right to Threaten and the Right to Punish” <i>Philosophy and Public Affairs</i> 14 (1985): 327-374 	<ul style="list-style-type: none"> • Demetriou, “Justifying Punishment: The Educative Approach as Presumptive Favorite,” <i>Criminal Justice Ethics</i> 31 (2012): 2-18. • Cogley, “Fortifying the Self-Defense Justification of Punishment,” <i>Public Affairs Quarterly</i> 31 (2017).

11 31 Mar

Boonin on “necessity” and restitution as a penal alternative; political authority and the morality of punishment

Core readings	Supplementary readings
<p>Boonin, <i>The Problem of Punishment</i>, pp. 213-276.</p>	<ul style="list-style-type: none"> • Cholbi, “Compulsory Victim Restitution is Punishment: A Reply to Boonin.”

<p><i>Use</i></p> <ul style="list-style-type: none"> • Davis, “Punishment Theory’s Golden Half Century: A Survey of Developments from (about) 1957 to 2007,” <i>Journal of Ethics</i> 13 (2009): 73-100. <p><i>as a resource to review and explore further topics and questions related to punishment.</i></p>	<p><i>Public Reason</i> 2 (2010): 85-93 (http://www.publicreason.ro/articol/26)</p> <ul style="list-style-type: none"> • Raz, “Authority and Justification,” <i>Philosophy & Public Affairs</i> 14 (1985): 3-29 • Flanders, “Political Philosophy and Punishment,” in Alexander and Ferzan (eds.), <i>Palgrave Handbook of Applied Ethics and the Criminal Law</i> (2019), pp. 521-545.
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