

**Philosophy of Criminal Law  
PHIL 378**

San Francisco State University

Department of Philosophy

Spring 2021

Online

Tuesdays and Thursdays 2:00-3:15 pm

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Office: Online

Office Hours: Tuesdays 11:00-12:00 pm

**Course Description:**

This course is offered as an introduction to the philosophy of criminal law. This introduction is meant to serve as a gateway to the reading you might choose to do for the rest of your life. My hope is that you will (a) become acquainted with some of the major philosophical themes that arise in the context of criminal law, and (b) become comfortable reading extended discussions of such themes. This can then serve as a foundation for you, allowing you to follow, or perhaps even contribute to, such discussions for as long as you remain interested in the broad topic of criminal law. Since my aim is to prepare you for what will follow your formal education, I want to structure the course to emphasize the skills that you will need to practice when your formal education is over, namely talking and writing intelligently about the things you have read. Thus, this class will be run, as much as possible, like a seminar in which I am the facilitator, and you are all active participants. And you will be judged on your ability to present and comment on the materials we read, both in class and in writing.

In this course, we will examine some of the central questions in philosophy of law, including:

- What is law?
- How do we determine the content of laws?
- What is the proper role of judges in interpreting the law?
- Do laws have moral content?
- What is authority? What gives law its authority?
- Must we obey the law? If so, why?
- How can we justify the law?
- How should we understand and respond to unjust laws?
- What is punishment? What is punishment for?
- What, if anything, justifies punishment by the state?
- What is enough punishment? What is too much punishment?
- What does justice require under nonideal conditions?

*Course Attributes:* This course has been certified by the Baccalaureate Requirements Committee as meeting (1) the Social Justice (SJ) university requirement and (2) the Upper-Division Arts and/or Humanities General Education requirement.

*Student Learning Outcomes for Upper Division Humanities Courses:* After completing this course, students will be able to: (1) apply philosophical methods of inquiry and analysis to the study of law and legal

philosophy; (2) articulate how theories in philosophy and law come to be accepted, contested, changed, or abandoned by the scholarly community; (3) evaluate the quality of information, claims, expressions, and interpretations; (4) construct coherent and sound arguments with support from multiple sources, including library resources and proper citations, that communicate what students have discovered; (5) analyze social issues as well as ethical dilemmas and choices that arise out of relevant research, discoveries, and applications in philosophy and in law; and (6) analyze multiple forms and variations of human diversity found in legal systems and legal practice, and apply that knowledge to their own lives and to ways in which they could contribute purposefully to the well being of their local communities, their nations, and the people of the world and to social justice.

*Student Learning Outcomes for Social Justice Courses:* After completing this course, participants will be able to: (1) analyze, articulate, and apply principles of social justice in addressing social constructions of identity, hierarchy, power, and privilege; and (2) identify ways in which they can contribute to social justice within local communities, nations, or the world.

All readings are available as PDFs on iLearn.

All listed readings are mandatory and must be read **\*before\*** the date under which they are listed. If you are curious about a particular topic and would like suggestions for further readings, ask!

- 1.) January 25<sup>th</sup> Introduction and our expectations of one another
- 2.) January 27<sup>th</sup> *Criminal Law and Political Community* R.A. Duff
- 3.) February 2<sup>nd</sup> *Principles of Morals and Legislation* Chapter 12 Jeremy Bentham
- 4.) February 4<sup>th</sup> *A Plea for Excuses* J.L. Austin
- 5.) February 9<sup>th</sup> *Are Prisons Obsolete* Chapter 1 Angela Davis
- 6.) February 11<sup>th</sup> *Are Prisons Obsolete* Chapter 6 Angela Davis
- 7.) February 16<sup>th</sup> *Terry v. Ohio* (1968)
- 8.) February 18<sup>th</sup> *Riley v. California* (2014)
- 9.) February 23<sup>rd</sup> *The Urgency of Intersectionality* Kimberlé Crenshaw
- 10.) February 25<sup>th</sup> *What's the Right Thing to Do?* Michael Sandel **(First Paper Due by 11:59pm)**
- 11.) March 2<sup>nd</sup> *Hard Cases* Ronald Dworkin
- 12.) March 4<sup>th</sup> *A Critical Guide to Vehicles in the Park* Fred Schauer
- 13.) March 9<sup>th</sup> *The Path of the Law* Oliver Wendall Holmes Jr.
- 14.) March 11<sup>th</sup> *Lying, Reciprocity, and Free Speech: A Reply to Eight Critics* Seana Valentine Shffrin
- 15.) March 16<sup>th</sup> *Democracy Within, Justice Without: The Duties of Informal Political Representatives.* Wendy Salkin
- 16.) March 18<sup>th</sup> *Republican Theory and Criminal Punishment* Phillip Pettit
- 17.) March 23<sup>rd</sup> No Class Spring Break

- 18.) March 25<sup>th</sup> No Class Spring Break
- 19.) March 30<sup>th</sup> *Can Punishment Morally Educate?* Russ Shafer-Landau
- 20.) April 1<sup>st</sup> *Who's Afraid of Critical Race Theory?* Derrick Bell **(Second Paper Due by 11:59pm)**
- 21.) April 6<sup>th</sup> *Reconstituting the Future: An Equality Amendment* Catharine A. MacKinnon & Kimberlé W. Crenshaw
- 22.) April 8<sup>th</sup> *Qualified Immunity: Both Sides of the Debate*
- 23.) April 13<sup>th</sup> *Boumediene v. Bush* (2008)
- 24.) April 15<sup>th</sup> *Kyllo v. United States* (2001)
- 25.) April 20<sup>th</sup> *Virtue Jurisprudence: A Virtue-Centered Theory of Judging* Lawrence B. Solum
- 26.) April 22<sup>nd</sup> *Marxist Theory of Law* Alan Hunt
- 27.) April 27<sup>th</sup> *Retributivism Revisited* Nathan Hanna
- 28.) April 29<sup>th</sup> *Are There Any Rules?* Timothy Endicott
- 29.) May 4<sup>th</sup> *Grounding practical normativity: going hybrid* Ruth Chang
- 30.) May 6<sup>th</sup> *Can there be a theory of law?* Joseph Raz
- 31.) May 11<sup>th</sup> Final Paper workshop
- 32.) May 13<sup>th</sup> Final Paper workshop
- 33.) **Final Paper Due May 21<sup>st</sup> at 11:59 pm**

#### Grade

Assignment	Due Date	% of Final Grade
Forum Discussion	Due Friday the week it is assigned	25%
Two Short Papers (1,000 words)	First paper is due February 25 <sup>th</sup> Second paper is due	25%
Final Paper (3,500-4,000 words)	Paper is due May 21 <sup>st</sup>	40%
Participation	Attend Zoom classes and actively participate	10%

Final paper abstract and outline:(1)a 250-300 word abstract advancing the main argument of your final paper; and (2)a detailed outline of your final paper that makes clear your paper's main argument, and the sub-arguments you will develop in support of that main argument. Your outline should be no more than 1000 words

Final letter grades correspond to the following point ranges:

A 94-100  
A- 90-94  
B+ 87-89  
B 83-86  
B- 80-82  
C+ 77-79  
C 73-76  
C- 70-72  
D+ 67-69  
D 63-66  
D- 60-62  
F 0-59

*Due Dates Policy* When we enter a classroom together, we are making many commitments to one another. One commitment we make is that we will all follow the same schedule. Due dates are hard deadlines. You will receive a grade of 0 for work submitted after the deadline unless you were unable to meet the deadline due to a documented emergency. Out of fairness to your fellow classmates, I will not grant extensions unless you were unable to meet the deadline due to a documented emergency. Out of consideration for your fellow classmates, you should not ask for extensions unless you faced a documented emergency.

*Participation Policy* In-class discussion is our opportunity to learn from one another. Participation is encouraged and expected. I will call on you. Participation is 10% of your final grade.

*Collaboration Policy* We learn better together. It is through discussion and the exchange of ideas that we gain new understanding and develop some of our best, most interesting insights. As such, I encourage you to speak with one another about the texts we read here, to share sources, to discuss your ideas with one another. That said, any written work you submit for evaluation must be the result of your own research and writing and reflect your own approach to the topic. You must also adhere to standard citation practices and properly cite any books, articles, websites, lectures, etc. that have helped you with your work. If you received any help with your writing (for instance, feedback on drafts), you must also acknowledge this assistance. If you are uncertain in a particular case, ask.

*Disability Access* Students with disabilities who need reasonable accommodations are encouraged to contact the instructor. The Disability Programs and Resource Center (DPRC) is available to facilitate the reasonable accommodations process. The DPRC is located in the Student Service Building and can be reached by telephone (voice/415-338-2472, video phone/415-335-7210) or by email (dprc@sfsu.edu).