

Hums 304 / Phil 460 / EP&E 467
Spring 2014
Theories of Punishment
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Here are a few questions you could ask about the costly, complex social practice of punishment:

- Is punishment ever justified?
- If so, under what conditions is it justified?
- What ends can punishment accomplish?
- Who ought to be punished?
- What sorts of punishments should be imposed?
- How severe should those punishments be?

A *theory* of punishment aims to answer these questions in a systematic way (for the final three questions, a theory aims to provide a systematic account of the relevant considerations). In this course we will examine a range of (more or less successful) attempts to construct such a theory. We'll begin with a survey of modern liberal and utilitarian thinkers on punishment, before diving into the deeply skeptical accounts found in Nietzsche and Foucault. Finally we'll turn to 20th (and 21st) century analytic philosophy's attempts to construct some systematic justification of punishment.

These camps don't engage with each other very directly. (The analytic philosophers are worse on that score.) The hope is that by putting these thinkers into direct contact, we'll be able to make some progress understanding a complex, troubling social phenomenon. Thus, while reading Nietzsche and Foucault, we'll be asking ourselves whether and how their wide-ranging discussions bear on whether a society could ever be justified in punishing wrongdoers. And while reading the analytic philosophers we'll be asking whether and how they can meet the challenges posed by Nietzsche and Foucault.

Texts ordered at the bookstore:

Nietzsche, *On the Genealogy of Morality* (Cambridge Revised Student Edition, 2007)

Foucault, *Discipline & Punish: The Birth of the Prison* (Vintage, 1995)

The rest of the readings will be posted to classes v2.

Grading:

25% Seminar participation: this is a seminar. Coming to class prepared and participating in discussion is required.

In addition, full credit for participation requires a series of *reading responses*: I will divide the class into two groups. Each week, one group will post a short (2-3 paragraphs) reading response on the course forum; the other group will comment on/respond to those reading responses. Posts will be due each Saturday at 11:59 PM; comments are due by

Sunday at 11:59 PM. The first round of posts and comments should be posted ahead of the 1/27 class meeting.

(This requirement is an experiment, meant to encourage some thought and discussion about the reading ahead of class without being too demanding. We'll see how it goes. I may adjust the requirement if it's not working well, but it won't be made more demanding.)

- 25% Midterm paper: ~1,500 words. Topics to be distributed. Due via e-mail (see below) 2/24 by 11:59 PM.
- 50% Final seminar paper: ~3000 words, on a topic of your choosing, due 4/30. A one-paragraph statement of your topic must be cleared with me by 4/7.

Papers should be submitted via e-mail to david.goldman@yale.edu by 11:59 PM on the dates they are due. Please send them as attachments in word/pages or similar word-processing format (preferably not as a PDF). **Be sure to put your name BOTH in the filename AND in the body of the paper.**

Absent a dean-issued excuse, late papers will be penalized at a rate of one-third of a letter grade (e.g., from a B+ to a B) per day late.

Don't plagiarize. Take a look at the definition of plagiarism in the Yale College Undergraduate Regulations (<http://yalecollege.yale.edu/content/undergraduate-regulations>) if you're uncertain about what this means. In general: you must cite any source that you use, whether you quote from it directly or just draw on its ideas. (The one exception: in assignments completed for this class, you don't need to cite materials or discussion from this class.) I report all cases of apparent plagiarism to the Yale College Executive Committee for further investigation.

Readings:

- 1/13 Background
no readings
- 1/17 Liberals (**note Friday meeting; the readings for this meeting are not long**)
Hobbes, *Leviathan*, ch. 28
Pufendorf, *On the Law of Nature and of Nations*, VIII.3 selections (including expanded VIII.3.9)
Locke, *Second Treatise of Government*, Chs I–III, VII. §§87–89
- 1/27 Utilitarianism
Bentham, excerpts from *An Introduction to the Principles of Morals and Legislation*: chs 1, 4, 13, 14 §§i–xv
Bentham, *Panopticon*: preface, letters 1, 2, 5–8, and postscript § viii (including note)

2/3 Disillusionment one
Nietzsche, *On the Genealogy of Morality*, Preface and First Essay

2/10 Disillusionment two
Nietzsche, *On the Genealogy of Morality*, Second Essay

first paper topics distributed

2/17 Disillusionment three
Re-read Nietzsche; get started on Foucault

2/24 Disillusionment four
Foucault, *Discipline & Punish*, Parts One and Two

first paper due

3/3 Disillusionment five
Foucault, *Discipline & Punish*, Parts Three and Four (skim 3.1 “Docile bodies” if you have time; focus on 3.2, 3.3, and 4.2)

3/24 Modern retributivism one
Herbert Morris, “Persons and Punishment”
David Dolinko, “Some Thoughts about Retributivism” to p. 549; focus on pp. 537–540 and 545–549

3/31 Modern retributivism two
Jean Hampton, “The Retributive Idea” pp. 111–114, 122–147
Dolinko, “Some Thoughts about Retributivism” pp. 549–554

4/7 Social protection and individual rights: “mixed theories”
John Rawls, “Two Concepts of Rules” (skip §II)
C. S. Nino, “A Consensual Theory of Punishment”

final paper topics must be cleared by today

4/14 A different take on enforcement and prevention
Warren Quinn, “The Right to Threaten and the Right to Punish”

4/21 Moral improvement and moral education
Herbert Morris, “A Paternalistic Theory of Punishment”
(If you have time: Jean Hampton, “The Moral Education Theory of Punishment”)

final papers due Weds 4/30 via e-mail

*******This syllabus is subject to revision.*******