

Law and Political Thought: Punishment

PLPT 4500 – Fall 2016

Time: Thursday, 6:00-8:30
Room: Cocks Hall 101

Instructor: Christopher D. Berk
Email: chrisberk@virginia.edu
Office Hours: Wednesday, 3:30-5:00
Gibson Hall, Room S342

Description

Law ‘on the books’ is not the same as law ‘in action.’ This course introduces students to the complex role that law plays in society through the issue of punishment. Law takes a variety of forms and serves a number of important social functions. We’ll investigate both court cases and case-studies, focusing on the eighth amendment, and that investigation will be enriched by reading an eclectic mix of political and social thinkers.

Course Objectives

Students in this course will learn, elaborate, and apply elements of legal reasoning to complex moral and political problems related to punishment. The problems covered are various and sundry: life without parole (LWOP) sentences for juveniles, chemical castration, loitering laws, prison conditions, sexual harassment, and felon disenfranchisement, to name a few. The assignments will hone your ability to reason from evidence and push you to communicate complex ideas efficiently and effectively.

Course Structure

This is a seminar and not a lecture course. Most of the classroom time will be dedicated to discussion, deliberation, and debate. We’ll begin most sessions with a close reading of a particular court case or case study, then move to the more abstract readings. I’m in the process of arranging a class session at the juvenile court. This session will be the week of [October 17](#), in lieu of class.

Assignments

Participation (20%): First, and most important, students are expected to read the assigned material before class and to contribute to discussion regularly and thoughtfully. As we will

be referencing the material during our seminar discussions, I expect that you will **print the articles and bring them with you to class**. Attendance is mandatory. Students with three unexcused absences will fail the participation section of the course.

Second, class discussion will be a combination of open conversation and cold-calling. If you do not feel able to participate on a given day for whatever reason, you can email me by noon the day of class to let me know. Please do not do this more than two or three times over the term.

Issue papers (40%): Each student must prepare two short issue papers. In the first paper I expect students to (1) highlight the core issues raised by the prompt, and (2) present the strongest arguments on both sides of the issue (10%, 1500 words). It will be due **September 26**. In the second paper, you'll have to make a persuasive argument. Not only will you highlight the core issues raised by the prompt, but I expect you to respond to counter-arguments in the process of forwarding your central claim (30%, 2000 words). Due **November 7**. I will provide a more detailed grading rubric ahead of releasing each prompt.

Final (40%): The final is a take-home examination (single prompt, 3000 words).

Submission Requirements

Except in documented cases of illness or emergency, late papers will lose 1/3 of a letter grade per day. However, each student may, at his or her discretion, take a 48-hour extension for one of the issue papers, no questions asked. If you are using your extension please indicate this on the first page of your paper.

Please submit all papers electronically in an *editable* format (.doc, .docx, .odf, etc.) to chrisberk@virginia.edu no later than 5pm on the due date. Do *not* put your name on your paper; use your student ID number. Please put the word count at the end of your document.

Computer Use During Class

You're welcome to use a computer (tablet, etc.) in class, but if you bring a computer you will be expected to post copies of your class notes on the course wiki (in UVA Collab) following the class session to share with others. If you are not willing to do this, do not bring a computer with you.

Disability Accommodation

If you are in need of accommodation for an impairment or disability, contact me as soon as possible. You should also contact the Student Disability Access Center (SDAC) to document your needs and determine a reasonable accommodation. They can be reached at sdac@virginia.edu.

I assume that all of us learn in different ways, and that the organization of any course will accommodate each student differently. For example, you may prefer to process information by speaking and listening, so that some of the written handouts I provide may be difficult to absorb. Please talk to me as soon as you can about your individual learning needs and how this course can best accommodate them. If you do not have a documented disability, remember that other support services, including the UVa Writing Center and the Office of Health Promotion, are available to all students.

Reading Schedule

This course is self-contained. All material will be available through the course UVA Collab page.

Practical notes on reading:

The reading for this class will, at times, be difficult. While the number of pages assigned each session might not be high, you'll quickly discover this does not mean the reading load is light. You should expect to spend at least four hours reading per class session. Some of it will be detailed reading of texts, particularly court cases, where accuracy and command are necessary. At other times, you'll need to read quickly through a large amount of material, passing rapidly over details and pulling out the central themes and concepts.

UNIT: INTRODUCTION

Week 1 [8/25]

- * Course Overview

Week 2 [9/1]

- * *State v. Post* (1845)
- * Cover, *Justice Accused*

UNIT: PRECEDENT

Week 3 [9/8]

- * *Thompson v. Oklahoma* (1988)
- * *Roper v. Simmons* (2005)
- * *Graham v. Florida* (2010)
- * *Miller v. Alabama* (2012)

Week 4 [9/15]

- * Langdell, *Cases on Contracts*
- * Holmes, *The Path of Law*
- * Holmes, “Book notice”
- * *Buck v. Bell* (1927)

Week 5 [9/22]

- * Bentham, *The Book of Fallacies*
- * Burke, *Reflections on the Revolution in France*

UNIT: CONTRACT

Week 6 [9/29]

ISSUE PAPER 1 DUE, 5pm [9/26]

- * *Green v. Board of Elections* (1966)
- * Pateman, *The Sexual Contract*
- * Mills, *The Racial Contract*

Week 7 [10/6]

- * *Lochner v. New York* (1905)
- * Viscusi, “Risk by Choice”
- * Calabresi and Melamed, “Property Rules, Liability Rules, and Inalienability”
- * Tversky and Kahneman, “Judgment Under Uncertainty: Heuristics and Biases”

Week 8 [10/13]

- * *People v. Gauntlett* (1986)
- * Aesop’s Fables, “The Fox and the Grapes”
- * Elster, *Sour Grapes*

Week 9 [10/20]

- * CLASS TRIP TO JUVENILE COURT (no session on 10/20)

Week 10 [10/27]

- * *Harris v. Forklift Systems, Inc.* (1993)
- * Mill, “The Subjection of Women”
- * MacKinnon, “Feminism Unmodified”

UNIT: LAW AND AUTHORITY

Week 11 [11/3]

- * *Papachristou v. City of Jacksonville* (1972)
- * Fuller, *The Morality of Law*

Week 12 [11/10]

ISSUE PAPER 2 DUE, 5pm [11/7]

- * Leesen, “An-arrgh-chy: The Law and Economics of Pirate Organization”
- * Benton, *A Search for Sovereignty*

Week 13 [11/17]

- * Friedman, *Law’s Order*
- * Ginsburg and McAdams, “Adjudicating in Anarchy: An Expressive Theory of International Dispute Resolution”

Week 14 [11/24]

- * THANKSGIVING HOLIDAY (no session on 11/24)

Week 15 [12/1]

- * *Brown v. Plata* (2011)
- * Simon, *Mass Incarceration on Trial*
- * Posner, *The Problematics of Moral and Legal Theory*
- * Dolovich, “Cruelty, Prison Conditions, and the Eighth Amendment”

FINAL EXAM DUE, 5pm [12/12]