

Philosophy of Crime and Punishment: Syllabus and Assignments

Syllabus for Philosophy of Crime and Punishment

This course will focus on two philosophical questions raised by the criminal law: the justification of legal punishment, and the appropriate standards for criminal liability. Should those convicted of a criminal offense be punished because they deserve to be, or because punishment will deter them and other members of society from committing criminal offenses in the future, or because it satisfies society's desire for vengeance? How should we determine the appropriate amount of punishment to impose on a convicted criminal? Are there any principled constraints on the type of punishment a just state may employ? May it punish law-breakers by publicly shaming them? With respect to the second question – what makes someone liable to punishment by the state – we will focus on challenges to the present treatment of criminal attempts and complicity. Should those who successfully commit a murder be punished more than those who attempt to do so but fail due to factors outside of their control? What steps must a person take in order to be punishable for a criminal attempt? Is it enough if a person plans a bank robbery, but never acts on that plan? Finally, what makes a person complicit in another's criminal act? Can someone be complicit even if the crime would have occurred without his or her contribution?

Instructor Information:

Professor David Lefkowitz

203 North Court

804-287-6805

dlefkowi@richmond.edu

Office Hours: Tuesdays, 1:30-3 p.m., and by appointment

Policies

- *Attendance:* Attendance is not required – you (and/or your family) are paying for your education, and you are free to waste that money if you wish. However, I guarantee you that you will not earn an admirable grade in this course, and may not even pass, if you choose not to attend class regularly. If you do decide to attend class, please make sure that you are on time; persistently late arrivals will have their grade in the course reduced by up to one full grade (e.g. a B will become a C).
- *Classroom Conduct:* Please do not leave class or begin to pack up until the class period is over. If it is necessary to help us both determine when that is, I will set an alarm clock on my desk. Please do not leave until the alarm goes off. If you need to leave early, please let me know before class begins and sit near the door so that you will not disrupt the class when you have to go.
Please do not read newspapers, books, or do work for other classes once class has begun. Also, please turn off the sound on any cell-phones or pagers.
Finally, please be courteous to me and to your classmates. Raise your hand when you have a comment to share with the class, do not talk with one another when someone else is speaking to the class, and be patient with others' questions and comments.
- *Academic Integrity:* All Richmond students are expected to adhere to the academic honor code.

- *Disabilities:* If you have a documented disability and would like some form of academic accommodation, please contact me as soon as possible to discuss whether such accommodation can be provided.

If you have any questions concerning these policies, please consult me.

If you experience difficulties in this course, do not hesitate to consult with me. There are also other resources that can support you in your efforts to meet course requirements.

Academic Skills Center (<http://asc.richmond.edu> or 289-8626) helps students assess their academic strengths and weaknesses; hone their academic skills through teaching effective test preparation, critical reading and thinking, information processing, concentration, and related techniques; work on specific subject areas (e.g., calculus, chemistry, accounting, etc.); and encourage campus and community involvement.

Speech Center (<http://speech.richmond.edu> or 289-8814): Assists with preparation and practice in the pursuit of excellence in public expression. Recording, playback, coaching and critique sessions offered by teams of student consultants trained to assist in developing ideas, arranging key points for more effective organization, improving style and delivery, and handling multimedia aids for individual and group presentations.

Writing Center assists writers at all levels of experience, across all majors. Students can schedule appointments with trained writing consultants who offer friendly critiques of written work: <http://writing.richmond.edu>

Counseling and Psychological Services (289-8119) assists students in meeting academic, personal, or emotional challenges. Services include assessment, short-term counseling and psychotherapy, crisis intervention and related services.

Evaluation Methods and Guidelines for Assignments:

1. **Short Paper Assignments:** Students are expected to complete six short paper assignments over the course of the semester, each of which will count for 9% of your final grade. Your paper should be roughly 900 words in length, and consist in a response to a prompt targeting a particular argument in the assigned readings. The purpose of these papers is to develop your ability to identify and explain philosophical arguments in a clear and concise manner. Therefore, these short papers will not require that you write either an introductory or concluding paragraph.
As college students, you should know to proofread your papers for spelling and grammatical mistakes. To reinforce the importance of doing so, I reduce by 1/3 the grade on a paper for every three errors of this sort that I find in it. So for example, if the grade on your paper would otherwise have been a B but I find three spelling or basic grammatical errors it, you will receive a B- on that paper. Your grade will also be reduced by 1/3 for every day it is late.
2. **Essays:** Students are expected to complete two roughly 2000 word essays, each of which will count for 20% of your final grade. The first essay will be due around the mid-point of the semester, and will address the topic of the moral justification of punishment, while the second will be due at the end of the semester, and address the relation between liability to punishment and the actual outcome of a criminal attempt, or the relation between complicity in the commission of a crime and the making of a causal contribution to it. These papers will offer you the opportunity to demonstrate

your ability to synthesize a number of different arguments, and to draw on several texts, in order to defend a particular view about just punishment or criminal liability. As part of the process of writing these essays, I'll ask you to share a completed draft with one of your peers, and to work with that student to revise and improve your paper. To assist you both in that task, I will distribute a handout that contains a number of questions to help guide you through the process of revision and resubmission. As with the short paper assignments, I expect you to proofread your papers for spelling and grammatical mistakes, and for every three mistakes of this sort I find in your paper I will reduce your grade by 1/3. Your grade will also be reduced by 1/3 for every day it is late.

- 3. On-line Discussion Items:** Students are expected to respond to at least six of the eight on-line discussion prompts I will be posting on the course Blackboard page during the semester. The purpose of these discussion prompts is to encourage you to reflect on examples used by some of the theorists we will be studying this semester without having your reflection immediately influenced by the conclusions those theorists wish to draw from their examples. Your overall score on the handouts will count for 6% of your final grade. Discussion prompts will be posted on the Blackboard page for the course at least two days in advance of when they are due, and a notice of their availability will be posted on the Announcements page. Each response to a discussion prompt will be graded on a three-point scale: three points for excellent work, two points for good work, one point for poor work, and zero points for failing to submit the assignment. I will drop the two lowest grades you earn for a response to a discussion prompt; for example, if you get two zeroes during the semester I will drop those grades when I calculate your handout score for the semester. **Late handout assignments will not be accepted.**

Class Participation

Students are expected to participate regularly in class discussion of the assigned readings. In order to facilitate this, and in order to assist students in their effort to engage with sometimes difficult texts, I will often provide students with one or two questions to consider when reading the assigned material. **Any student that persistently fails to demonstrate at least a good faith effort to understand the readings and to participate in class discussion of them will have his or her grade for the course reduced by one full grade.** For example, a student that earns a B in the course as a result of her written work, but that fails to demonstrate a good faith effort to understand the readings and to participate in class discussion of them will receive a C for her final grade.

Required Readings

The assigned readings for this class are available on the course Blackboard page. Please let me know if you have any difficulty accessing these texts.

Students are expected to have access to the reading assigned for a particular class during that class period. That means you should either bring your computer, tablet, etc., with you, or print out and bring with you whatever reading has been assigned for that class period.

Schedule:

Lesson	Lesson Title	Lesson Material
1	<p>What is (legal) punishment? Why must it be justified?</p> <p>The classic debate: Retributivism vs. Utilitarianism (Consequentialism)</p>	<ul style="list-style-type: none"> • Excerpts from Bedau, <i>Stanford Encyclopedia of Philosophy</i> entry on Punishment; Duff, <i>Stanford Encyclopedia of Philosophy</i> entry on Legal Punishment. • Joel Feinberg, “The Classic Debate”
2	<p>Consequentialist justifications for punishment</p>	<ul style="list-style-type: none"> • Jeremy Bentham, “The Utilitarian Theory of Punishment” • Igor Primoratz, ‘Arguments Against the Utilitarian Theory’ • Thom Brooks, ‘Deterrence,’ in <i>Punishment</i> • Paul Robinson, ‘The Difficulties of Deterrence as a Distributive Principle’
3	<p>Retributivist Justifications for Punishment: Respect for Persons</p>	<ul style="list-style-type: none"> • Clips from <i>A Clockwork Orange</i> and <i>One Flew Over the Cuckoo’s Nest</i>. • Herbert Morris, ‘Persons and Punishment’ • Immanuel Kant, ‘On the Right to Punish and to Grant Clemency’ • Jane Johnson, ‘Hegel on Punishment: A More Sophisticated Retributivism’ • Thom Brooks, ‘Hegel and the Unified Theory of Punishment’
4	<p>Retributive Justifications for Punishment: Fair Play</p>	<ul style="list-style-type: none"> • Richard Dagger, ‘Playing Fair with Punishment’ • Zachary Hoskins, ‘Fair Play, Political Obligation, and Punishment’ • David Dolinko, ‘Some Thoughts About Retributivism,’ 537-55 • Russ Shafer- Landau, ‘The Failure of Retributivism,’ 289-312
5	<p>Retributive Justifications for Punishment: Retributive Emotions</p> <p>Victim Impact Statements, Emotion, and Proportional Punishment</p>	<ul style="list-style-type: none"> • Michael Moore, ‘The Moral Worth of Retribution’ • David Dolinko, ‘Some Thoughts About Retributivism,’ 555-59. • U.S. Supreme Court, <i>Payne v. Tennessee (1991)</i> • Jeffrie Murphy, ‘The Role of the Victim’ • Gary Watson, ‘Responsibility and the Limits of Evil’

6	Shaming Punishments	<ul style="list-style-type: none"> • News articles on shaming punishments from Wall Street Journal, Washington Post, Chicago Tribune • Dan Kahan, 'What's <i>Really</i> Wrong With Shaming Sanctions' • Thom Brooks, 'Shame on You, Shame on Me? Nussbaum on Shaming Punishments'
7	Mercy and Just Legal Punishment	<ul style="list-style-type: none"> • Rainbolt, 'Mercy: In Defense of Caprice' • Tasioulas, 'Punishment and Repentance' • Heidi Hurd, 'The Morality of Mercy' • Dan Markel, 'Against Mercy'
8	Criminal Liability: Attempts, Outcomes, and Moral Luck	<ul style="list-style-type: none"> • Sanford Kadish, 'The Criminal Law and the Luck of the Draw' • Joel Feinberg, 'Criminal Attempts: Equal Punishments for Failed Attempts' • Larry Alexander, 'Crime and Culpability' • Michael Moore, 'The Independent Moral Significance of Wrongdoing' • Peter Westen, 'Why Criminal Harms Matter: Plato's Abiding Insight in the <i>Laws</i>.' • R.A. Duff, <i>Criminal Attempts</i>, Chs. 12 and 13 • David Lewis, 'The Punishment that Leaves Something to Chance'
9	Criminal Liability: Complicity	<ul style="list-style-type: none"> • Christopher Kutz, excerpts from 'The Philosophical Foundations of Complicity Law' • John Gardner, 'Complicity and Causality' • Christopher Kutz, 'Causeless Complicity' • Markus Dubber, 'Criminalizing Complicity: A Comparative Analysis' • Chiara Lepora and Robert Goodin, 'Grading Complicity in Rwandan Refugee Camps'
10	Mistake of Fact and Mistake of Law	<ul style="list-style-type: none"> • Kenneth W. Simons, 'Mistake of Fact or Mistake of Law? Explaining and Defending the Distinction' • Larry Alexander, 'Facts, Law, Exculpation, and Inculcation: Comments'

		<p>on Simons</p> <ul style="list-style-type: none">• Gideon Yaffe, 'Excusing Mistakes of Law'• Alexander Guerrero, Mark Greenberg 'Comments on Yaffe, Excusing Mistakes of Law'
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Short Paper on Deterrence and Just Legal Punishment

Relevant Texts: Jeremy Bentham, 'The Utilitarian Theory of Punishment'; Paul H. Robinson, 'The Difficulties of Deterrence as a Distributive Principle'

Among those cases Jeremy Bentham describes as "unmeet for punishment" are ones in which punishment must be inefficacious (or ineffective). Choose any two of the cases Bentham identifies as a type in which punishment must be inefficacious, and explain why he reaches this conclusion in those cases. Then explain why Bentham maintains that punishment cannot be justified in cases where it must be inefficacious. Finally, describe how Paul Robinson extends Bentham's argument regarding ineffective punishment to defend the claim that any attempt to manipulate punishments for particular crimes (e.g. 1st degree murder, 2nd degree murder, negligent homicide, etc.) with the goal of producing the greatest possible deterrent effect must fail.

Your paper should be roughly 900 words in length, typed, double-spaced with one-inch margins, and using 12-point font. Please proofread for spelling, grammar, coherence, and typos. For every three spelling, grammatical, or typing errors, your grade will be reduced by 1/3 (so for example, a B would become a B-). Your grade will also be reduced by 1/3 for every day it is late (i.e. every day beyond the due date for this paper). Pages should be numbered and stapled together. No folders or binders, please. Please put your name at the top of the first page.

As we discussed in class, these short writing assignments do not require either an introductory paragraph or a concluding one. Rather, our sole aim here is to develop your ability to identify and explain arguments.

Short Paper on the Fair Play Justification of Legal Punishment

Relevant Texts: David Dolinko, 'Some Thoughts About Retributivism'; Richard Dagger, 'Playing Fair with Punishment'; Zachary Hoskins, 'Fair Play, Political Obligation, and Punishment'

Fair-play accounts provide a successful justification for legal punishment only if we can make sense of the idea that breaking the law gives the criminal an unfair advantage, and punishment deprives them of it. David Dolinko considers three possible interpretations of this idea – that is, three ways to understand the idea that a criminal act gives a person an unfair advantage, and that punishment subsequently deprives them of it – and argues that we have good reason to reject each of them. Explain any two of these interpretations, and Dolinko's argument for why we ought to reject them. Then describe Dagger's or Hoskins' account of how we ought to understand the unfair advantage gained by someone who commits a criminal act. Do their accounts provide a satisfactory explanation for how punishment negates the criminal's unfair advantage? Why or why not?

Your paper should be roughly 900 words in length, typed, double-spaced with one-inch margins, and using 12-point font. Please proofread for spelling, grammar, coherence, and typos. For every three spelling, grammatical, or typing errors, your grade will be reduced by 1/3 (so for example, a B would become a B-). Your grade will also be reduced by 1/3 for every day it is late (i.e. every day beyond the due date for this paper). Pages should be numbered and stapled together. No folders or binders, please. Please put your name at the top of the first page.

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Short Paper on Retributive Emotions and Just Legal Punishment

Relevant Texts: Michael Moore, 'The Moral Worth of Retribution'; David Dolinko, 'Some Thoughts About Retributivism'

One of the standard criticisms of retributivism that Moore considers is that punishment for its own sake does no good. Describe Moore's response to this criticism. Note that his response has a dialectical form – that is, he offers a rebuttal to the criticism, then considers a response to that rebuttal that the critic of retributivism might make, then offers an objection to that response. Then explain Dolinko's two criticisms of Moore's view that punishment for its own sake does good because it gives people what they deserve.

Your paper should be roughly 900 words in length, typed, double-spaced with one-inch margins, and using 12-point font. Please proofread for spelling, grammar, coherence, and typos. For every three spelling, grammatical, or typing errors, your grade will be reduced by 1/3 (so for example, a B would become a B-). Your grade will also be reduced by 1/3 for every day it is late (i.e. every day beyond the due date for this paper). Pages should be numbered and stapled together. No folders or binders, please. Please put your name at the top of the first page.

As we discussed in class, these short writing assignments do not require either an introductory paragraph or a concluding one. Rather, our sole aim here is to develop your ability to identify and explain arguments.

Short Paper on Mercy and Just Legal Punishment

Relevant Texts: Heidi Hurd, 'The Morality of Mercy;' Dan Markel, 'Against Mercy'

Heidi Hurd and Dan Markel both maintain that a judge acts unjustly if he mercifully sentences a criminal to less than the legal punishment he ought to receive for his crime. Describe their different arguments for that conclusion. Note the focus here on the exercise of mercy by legal officials in their capacity as such – this, and not the exercise of mercy in every possible case where it might be exercised, is the target of Hurd's criticism.

Your paper should be roughly 900 words in length, typed, double-spaced with one-inch margins, and using 12-point font. Please proofread for spelling, grammar, coherence, and typos. For every three spelling, grammatical, or typing errors, your grade will be reduced by 1/3 (so for example, a B would become a B-). Your grade will also be reduced by 1/3 for every day it is late (i.e. every day beyond the due date for this paper). Pages should be numbered and stapled together. No folders or binders, please. Please put your name at the top of the first page.

As we discussed in class, these short writing assignments do not require either an introductory paragraph or a concluding one. Rather, our sole aim here is to develop your ability to identify and explain arguments.

Short Paper on the Relevance of Actual Outcomes to Criminal Liability

Relevant Texts: R. A. Duff, 'Chance, Control, and Culpability'; Peter Westen, 'Why Criminal Harms Matter: Plato's Abiding Insight in the *Laws*'

R. A. Duff and Peter Westen both defend the claim that whether a person succeeds or fails in her attempt to commit murder ought to figure in the state's determination of the appropriate penal response to that person. Specifically, each argues that the state acts permissibly if it punishes failed attempts less than it punishes successful ones. Describe each of these authors argument for that conclusion. Then explain Westen's criticism of Duff's argument for the relevance of actual outcomes to criminal liability.

Your paper should be roughly 900 words in length, typed, double-spaced with one-inch margins, and using 12-point font. Please proofread for spelling, grammar, coherence, and typos. For every three spelling, grammatical, or typing errors, your grade will be reduced by 1/3 (so for example, a B would become a B-). Your grade will also be reduced by 1/3 for every day it is late (i.e. every day beyond the due date for this paper). Pages should be numbered and stapled together. No folders or binders, please. Please put your name at the top of the first page.

As we discussed in class, these short writing assignments do not require either an introductory paragraph or a concluding one. Rather, our sole aim here is to develop your ability to identify and explain arguments.

Short Paper on Causation and Complicity

Relevant Texts: John Gardner, 'Complicity and Causality'; Christopher Kutz, 'Causeless Complicity'

The famous case of *Attorney General v. Tally* raises the question of whether someone can be complicit in a crime where his efforts make no difference to its occurrence – that is, where his effort to aid or encourage the commission of the crime make no causal contribution to it. Gardner and Kutz both respond yes, but they offer different rationales in support of that answer. Describe each of their rationales. Hint: Kutz thinks the *Tally* case tells us something about the link between causation and accomplice liability (i.e. criminal liability for complicity in a criminal act), while Gardner thinks we should resist describing as “making no difference to the occurrence of wrongdoing” an act that was not causally necessary for the occurrence of a criminal act.

Your paper should be roughly 900 words in length, typed, double-spaced with one-inch margins, and using 12-point font. Please proofread for spelling, grammar, coherence, and typos. For every three spelling, grammatical, or typing errors, your grade will be reduced by 1/3 (so for example, a B would become a B-). Your grade will also be reduced by 1/3 for every day it is late (i.e. every day beyond the due date for this paper). Pages should be numbered and stapled together. No folders or binders, please. Please put your name at the top of the first page.

As we discussed in class, these short writing assignments do not require either an introductory paragraph or a concluding one. Rather, our sole aim here is to develop your ability to identify and explain arguments.

Essay Assignment on the Justification of Legal Punishment

Please write a roughly 2000 word (or 8 page) essay on the topic of the moral justification of punishment. You may devote your essay either to the defense of a particular account of just legal punishment, or to a sustained criticism of a particular approach to justifying legal punishment commonly heard in public and academic debate. Examples of the first type of paper that we have read this semester include Betham's 'Utilitarian Theory of Punishment,' and Moore's 'The Moral Worth of Retribution,' while examples of the latter include Primoratz's 'Arguments Against the Utilitarian Theory' and Shafer-Landau's 'The Failure of Retributivism'. If you choose to offer a defense of a particular account of punishment, please be sure to consider and rebut two possible challenges to the account you defend. If you choose to write a paper critical of a particular approach to justifying punishment, please be sure to offer a careful description of that approach before you begin criticizing it. You may also wish to consider any responses an advocate of the approach you are criticizing might make to the objections you raise.

Your paper must be typed, double-spaced with one-inch margins, and using 12-point font. Please proofread for spelling, grammar, coherence, and typos. For every three spelling, grammatical, or typing errors on your final draft, your grade will be reduced by 1/3 (so for example, a B would become a B-). Your grade will also be reduced by 1/3 for every day it is late (i.e. every day beyond the due date for this paper). Please put your name at the top of the first page.

Please bring a **complete** draft with you to class on -----. I'll ask you to work in pairs, and using the revise and resubmit guide I will distribute in class, offer one another feedback on your papers. All students are expected to complete a revise and resubmit guide for a fellow student.

Students are welcome, but not required, to discuss a rough draft of their paper with me. I will schedule appointments on a first-come, first-served basis for ----- . I also encourage you to take advantage of the Writing Center: <http://writing.richmond.edu>.

Please e-mail a copy of your final draft to dlefkowi@richmond.edu by noon on -----.

Essay Assignment on Criminal Liability, Outcomes, and Causation

Please write a roughly 2000 word (or 8 page) essay on **one** of the following two topics:

1. The moral justifiability of inflicting a greater punishment on those who succeed in their attempt to commit a crime than on those who fail in their attempt to commit the same type of crime. Regardless of the conclusion you seek to defend, your paper should include an assessment of at least one argument critical of, and one argument in defense of, the existing practice of punishing someone convicted of committing crime X more than someone convicted only of attempted crime X. Of course, you are free – indeed, encouraged – to offer more than one argument in defense of whichever position on this issue you seek to defend. For example, you might draw on Kadish's and Alexander's thought experiments to argue that we ought to reform our criminal law practices so that actual outcomes have no effect on the amount or type of punishment a convicted criminal receives. Alternatively, you might draw on Moore to attack the reformers' arguments, and Westen to defend our existing practice. And of course there are the arguments from Duff, Lewis, and others. Pay particular attention to the structure of your overall argument as you construct it, since some of the arguments we have discussed in defense of a particular conclusion may conflict with other arguments for the same conclusion.
2. The relevance of causation to the crime of complicity. Specifically, I would like you to address two questions. First, must one person make a causal contribution to another's commission of a crime in order to be complicit in that criminal act? Second, might it be morally justifiable to inflict a greater punishment on a person complicit in another's criminal act than on the person who committed that act; e.g. punishing the person convicted of complicity in murder more than the murderer herself? How you answer the first of these questions will have repercussions for how you answer the second – not necessarily in the answer you give, but in the sort of justifications you might offer in defense of that conclusion. Finally, draw on the arguments you make in response to these two questions to assess the complicity of either Rwandan radio broadcasters who encouraged (incited?) massacres of Tutsis, or self-described anti-jihadist bloggers whose views were repeatedly cited in the manifesto left by Anders Behring Breivik, the Norwegian man who massacred scores of young people attending a political party's summer retreat.

Your paper must be typed, double-spaced with one-inch margins, and using 12-point font. Please proofread for spelling, grammar, coherence, and typos. For every three spelling, grammatical, or typing errors on your final draft, your grade will be reduced by 1/3 (so for example, a B would become a B-). Your grade will also be reduced by 1/3 for every day it is late (i.e. every day beyond the due date for this paper). Please put your name at the top of the first page.

Please bring a **complete** draft with you to class on -----. I'll ask you to work in pairs, and using the revise and resubmit guide I will distribute in class, offer one another feedback on your papers. All students are expected to complete a revise and resubmit guide for a fellow student.

Students are welcome, but not required, to discuss a rough draft of their paper with me. I will schedule appointments on a first-come, first-served basis for ----- . I also encourage you to take advantage of the Writing Center: <http://writing.richmond.edu>.

Please e-mail a copy of your final draft to dlefkowi@richmond.edu by noon on -----.

Revise and Resubmit Guidelines

Very few papers are actually the product of a single mind. In most cases, the author of a paper receives feedback on it from friends, audiences at a conference or two, and reviewers working on behalf of a journal before the final, much revised, version is published. Today I want you to offer this same kind of feedback on a draft paper written by one of your classmates – who, in return, will give you comments on your own paper. Please begin by reading the entire paper from start to finish. Once you have done so, re-read the paper and answer the following questions:

1. What is the author's thesis? That is, what claim does he or she want me to believe when I finish reading this paper?
2. How does the author propose to convince me of the truth of his or her thesis? You should be able to answer this question in no more than two or three sentences.
3. Are there any sentences or paragraphs in which it is difficult to understand what the author is saying? Underline these passages, and write down in the margin why you are unclear on what the author is trying to say. For example, "I don't understand what you mean by 'fair play'" or "I don't see what reason I have to accept the claim in this last sentence in the paragraph."
4. Are there any sentences or paragraphs that you find especially well-argued or compelling? Are there any ideas that you would like to see developed in greater detail?
5. Are there any ideas, sentences, or paragraphs that do not seem to be doing any work in advancing the author's thesis?
6. Are there any stylistic features of the paper that distracted your attention from the author's argument? Are there any grammatical mistakes that caught your attention? [This is a rough draft, so don't get too caught up with identifying these shortcomings. Rather, limit your self to especially egregious faults].

On the basis of your answers to these questions, please offer the author **constructive** criticism. The goal here is to work with the author to strengthen his or her paper. Many of the most fruitful improvements to an author's work are the result of conversation. You can begin a profitable one, for you and the author, by suggesting a way to address one of the criticisms you have of the author's draft.

Philosophy of Crime and Punishment Gedankenexperiments

Kant's Retributivism

Suppose that we, the members of this philosophy class, make up the entire population of our society, and we live on an island, cut off from any interaction with other societies. I murder one of you, a crime for which I am subsequently convicted, and for which I am sentenced to an appropriate punishment. Insert here whatever you think counts as an appropriate punishment – for instance, if you think murderers should be executed, imagine that I receive a death sentence. Before my punishment can be administered, however, the rest of you decide to dissolve our association. Each of you plans to sail off in your boat to join some other society. Kant writes that “even if a civil society were to be dissolved by the consent of all its members (e.g. if a people inhabiting an island decided to separate and disperse throughout the world), the last murderer remaining in prison would first have to be executed.” Do you agree? That is, supposing the death penalty to be a just punishment for first-degree murder, do you think justice requires that a convicted murderer be executed before the members of society disperse throughout the world? What does your answer to this question tell us about the relevance of consequences to the justification of punishment?

Just Punishment and Dr. House

Imagine that an extraordinarily talented physician – let’s call him Dr. House – commits several criminal offences, including illegal possession and use of a controlled substance, battery, and reckless driving. Suppose, however, that if we imprison Dr. House then a number of people whom he might otherwise save from death will not be saved. Should Dr. House nevertheless receive the punishment that any other person who committed the same offences would receive?

Consider how Bentham and Kant would respond in this case. Is there any difference between the case of Dr. House, as described here, and that of a person who offers to participate in the testing of a risky, yet potentially hugely beneficial, new drug in exchange for not going to prison or paying a fine for his criminal offence?

How Can Punishment Respect a Person as an Autonomous Agent?

Herbert Morris argues that just legal punishment must respect the convicted criminal’s status as an autonomous agent – that is, as someone capable of exercising rational control over his or her life, or as we said in class, of authoring his or her life. Yet it is not clear how the state’s threat to coerce those who violate its rules differs from a criminal’s threat to coerce those who fail to obey her commands. How can it be, then, that in making this threat (and in carrying it out) the criminal fails to respect her victim’s status as an autonomous agent, while in threatening to punish (or actually punishing) convicted criminals that state does respect their status as autonomous agents?

We think that Joan using coercion to prevent John from leaving her house is morally unjust, and so should be legally prohibited (e.g. as the crime of kidnapping) because Joan fails to respect John's right to choose how to lead his life – including whether to leave Joan's house. We do not think that imprisoning a person convicted of a crime by a legitimate court involves disrespect for the criminal's autonomy. How can we justify our different moral judgments in these two cases? Why do we think a criminal brings her punishment upon herself – that she chooses it – when we do not think that John chooses to be coerced by Jane?

Retribution, Ressentiment, and Victim Impact Statements

Nietzsche maintains that retributivism, or the desire to punish on retributivist grounds, is grounded in a set of attitudes and emotions we should seek to repress – or at least not act on. Consider some of those emotions (and Moore's discussion of them) and respond to several following questions: Do you think you have ever sought to punish someone (or to have someone punished) on the basis of these emotions? Do you think you have ever suffered punishment as a result of someone else acting from these emotions? Do you think *every* act of punishment is grounded in one or more of these emotions? How reliable is introspection on this matter – can we trust our judgment that when we punish (or back others' punishing) we are, or are not, motivated by one or more of these emotions? Finally, are victim impact statements likely to arouse these same emotions? Are there other emotions they might arouse? Are we more or less likely to assign a convicted criminal a proportionate sentence if we allow victim impact statements?

Mercy and the Right to be Punished

In Victor Hugo's *Les Misérables*, Monseigneur Bienvenu, the Bishop, lies to the police about Jean Valjean's theft of his silver candlesticks, and thereby saves him from arrest. Bienvenu explains his conduct to Valjean thusly: "my brother, you no longer belong to evil, but to good. It is your soul I am buying for you. I withdraw it from the dark thoughts and from the spirit of perdition, and I give it to God." In deceiving the police regarding Valjean's criminal act, and doing so for the reason stated in the quote above, does Bienvenu treat Valjean mercifully? Why or why not? Is Bienvenu's action consistent with respect for Valjean as an autonomous agent? In Morris's terms, does Bienvenu acknowledge Valjean's right to be punished?

The Play Sword Fight

Larry Alexander describes the following scenario: "Two siblings have play swords and like to engage in make-believe sword play with each other. They have been repeatedly told not to do so in the house, especially in the living room, where a family heirloom vase occupies a position of prominence and vulnerability. Their father, in the kitchen preparing dinner, hears them shouting war cries in the living room. As he heads in the direction to reprimand them, he hears a crash; and as he enters the living room, he sees the remains of the vase on the floor and both children crying, pointing accusing fingers at the other, and screaming that the other one's

sword, not hers, hit the vase" ('Crime and Culpability,' p. 11). Do you think the father should determine whose sword actually struck the vase before assigning punishments to each of the children? Suppose the father had accidentally left his video camera running in the living room, and pointed in the direction of the vase. Should he watch the video before deciding who to punish, or how much to punish each of the children? Why, or why not? And what, if anything, does this tell us about the basis for liability to legal punishment?

Attempt, Success, and Temporally Distant Outcomes

Consider the following example (from Sanford Kadish, 'The Criminal Law and the Luck of the Draw'): Suppose a man stabbed his son in anger, pleaded guilty, and was convicted of a crime equivalent for our purposes to attempted murder. After serving several months for a two year sentence, he was paroled. However, three months later his son, who had been hospitalized since the attack, took a turn for the worse and died, whereupon the prosecutor, quite within the law, charged the father with murder, a crime punishable with life imprisonment or death. Does this seem a just outcome to you? Why or why not? Is there a difference between this case and a variation in which the son dies immediately following his stabbing, or one week later, or one day before the father's trial on the charge of attempted murder? If so, what is the difference?

Judge Tally

Consider the following approximation of the case of *Martin v. Tally* (1894): Judge Tally has learned that his sister-in-law has been seduced by a cad, Ross, and that his brothers-in-law, the Skeltons, are planning to kill Ross. Tally also learns that a friend of Ross has just sent a warning telegram to be delivered to Ross, in the town where he has fled. Acting quickly, Tally sends a second message to the telegraph operator in that town, instructing him not to warn Ross. As a consequence, the warning telegram is not delivered. However, since the Skeltons are already hot on Ross's trail, there is little reason to think the warning would have had any effect in any event. The Skeltons catch up with Ross and gun him down. The question for you: Is Judge Tally also guilty of Ross's murder? Is he complicit in it? Why or why not?