

PHIL 138: Responsibility
Fall 2019; MWF 12-12:50pm; Solis 110
Instructor: David O. Brink; H&SS 8016
Office Hours: M 1-2pm, W 2-3pm, and by appointment
Email: dbrink@ucsd.edu

ISSUES

This course concerns the nature of responsibility and its implications for our practices of blame, excuse, and punishment. In particular, we will focus on the relationship between responsibility and excuse. An attractive working hypothesis is that responsibility and excuse are *inversely related* — if one is excused for one's wrongdoing, one is not responsible for it; and if one is responsible for one's wrongdoing, one has no excuse for it. The truth of this hypothesis implies that responsibility and excuse should have corresponding structure and that we should be able to study either in light of our beliefs about the other. As the criminal law theorist Michael Moore likes to say, "excuse is the royal road to responsibility," but we do well to remember that this is a two-way street.

Our approach to the study of responsibility and excuse and their further implications for blame and punishment will be guided by two methodological ideas.

First, philosophical and jurisprudential perspectives on responsibility and excuse stand to benefit from mutual engagement. Often, work in these two domains proceeds in parallel with fairly modest interaction. Many philosophers writing about free will and responsibility tend to focus on foundational questions involving skepticism about responsibility, asking if we are ever responsible for our actions. They are commonly divided into (1) *incompatibilists*, who think that freedom and responsibility are incompatible with causal determinism and so embrace either (1a) *free will skepticism* or (1b) *libertarianism*, and (2) *compatibilists* who think that freedom and responsibility are compatible with determinism. By contrast, criminal law theorists are explicit or implicit compatibilists who tend to assume we are responsible in standard cases and patrol the border of responsibility via the doctrine of excuse, trying to determine when defendants are responsible and when they are excused. But these different starting points and concerns don't make disagreement inevitable. Though moral and criminal responsibility are not the same, they are not only parallel at many points, but exert mutual influence. The criminal law is shaped by moral ideas about wrongdoing and culpability, and criminal law principles and doctrines about responsibility and excuse affect our moral understanding of these concepts. So, there is reason to think that each approach to thinking about responsibility and excuse might learn something from the other approach. Indeed, we will be concerned with the potential for common ground between these two perspectives.

We will focus on the *reasons-responsive* wing in the compatibilist tradition, which claims that agents are responsible for the actions that they have intentionally performed just in case they were normatively competent and reasons-responsive at the time of action (e.g. John Fischer and Mark Ravizza, R.J. Wallace, Susan Wolf, and Dana Nelkin). We will compare this tradition with the *fair choice* model of criminal responsibility, which claims that agents are responsible for their intentional actions just in case they were rational at the time and had the fair opportunity to exercise these rational capacities free from wrongful interference by others (e.g. H.L.A. Hart, Michael Moore, and Stephen Morse). A good case can be made that these two traditions point toward a common architecture for moral and criminal responsibility, which is no accident if we accept a broadly retributive conception of criminal responsibility that treats blame and punishment as *pro tanto* fitting responses to wrongdoing for which the agent is culpable or responsible. The umbrella concept for this conception of responsibility is the *fair opportunity to avoid wrongdoing*; it factors responsibility into two further conditions: an internal condition of *normative competence* and a contextual condition of *situational control*. We excuse wrongdoers insofar as they lacked either normative competence or situational control, because these conditions compromise their fair

opportunity to avoid wrongdoing. We will develop the essentials of this fair opportunity conception of moral and criminal responsibility before considering challenges to it and its application to interesting cases of partial responsibility.

Second, at various points, we will employ the familiar strategy of using pathological and developmental cases as a window onto proper functioning. Because excuses deny culpability or responsibility, and responsibility implies the lack of an excuse, we will see what we can learn about normal responsibility by studying excuse, especially cases of diminished or partial responsibility. We will apply and test the fair opportunity conception of responsibility by looking at its implications for issues involving insanity and psychopathy, immaturity, addiction, and provocation and crimes of passion.

We will begin by looking at familiar and attractive general conceptions of responsibility in both moral philosophy and the criminal law. We will start with non-skeptical philosophical attempts to ground the reactive attitudes in an agent's capacities for reasons-responsiveness and control. Then we will look at parallel ideas about criminal responsibility — including the role of responsibility in retributivist conceptions of punishment, the elements of criminal offense (*actus reus* and *mens rea*), and doctrines of excuse.

We will conclude our discussion of the architecture of responsibility by looking at two challenges to our assumptions about responsibility. One challenge asks whether moral and criminal wrongdoing should be excused, fully or partially, if it is committed in conditions of structural injustice. This challenge is not easily dismissed if we conceive of responsibility in terms of the fair opportunity to avoid wrongdoing, because structural injustice may compromise fair opportunity. We will also examine the challenge to responsibility posed by the situationist literature in psychology, which insists that human behavior is often explained by situational, rather than characterological, factors. We will ask whether situationist factors excuse, in general, and in the special case involving wartime wrongdoing.

We then apply our conception of responsibility to potential cases of partial responsibility. We'll begin with the topic of insanity, looking at some varieties of normative incompetence and asking if current interpretations of the insanity defense reflect a proper conception of the elements of responsibility and control. In doing so, we will address the vexed question whether and, if so, why psychopathy might be excusing. Next, we'll turn to juvenile justice and ask if current trends to transfer juveniles to adult criminal court reflect an adequate conception of the developmental nature of responsibility and the retributive idea that wrongdoing and responsibility are independent variables in criminal desert, concluding with a discussion of recent Supreme Court cases addressing sentencing rules for juvenile crime. After that, we'll look at issues involving addiction to try to understand how addiction works and whether and, if so, how it might compromise capacities constitutive of responsibility. We'll also look at literature involving provocation and crimes of passion and ask if these doctrines are best understood on the model of excuse or justification. We'll also ask if there is a double standard at work in acceptance of (partial) excuses in crimes of passion and skepticism about battered woman syndrome. Time permitting, we'll end by discussing the merits of the idea of a generic excuse of partial responsibility. While some European criminal justice systems recognize a generic excuse of partial responsibility for those with diminished normative competence, criminal jurisprudence in the United States does not. We'll ask if our skepticism about partial responsibility is defensible on principled or pragmatic grounds or is instead an unprincipled blindspot.

Issues about responsibility and excuse are especially interesting in part because they are sites at which philosophical and jurisprudential assumptions and arguments come together and interact with empirical psychological claims. It is field rich with interdisciplinary potential.

FORMAT

The class meetings will involve lectures, liberally seasoned with discussion. The lectures will provide philosophical background and structure to the issues raised in the readings and will present and assess issues in a fairly systematic way. But I expect students to get involved and generate discussion by asking for clarification, expressing skepticism about my interpretive and systematic proposals, suggesting alternative interpretations of readings, and proposing alternative assessments of issues and arguments under discussion. Students who attend class regularly and participate in class discussion get more out of the class and consistently do better on class requirements, and attendance and participation will be one component of the overall grade. If necessary, I may “cold call” on students.

REQUIREMENTS AND GRADES

Students registered for the course will take five bi-weekly quizzes and write one paper. The successful completion of each of these requirements is a condition of passing the course. There will be no final exam.

- **Quizzes.** The quizzes will be held every other week (on Fridays), beginning October 11 and on October 25, November 8, November 22, and December 6. They will include true/false, multiple choice, and/or short answer questions and take less than 10 minutes. All quizzes count, and you can miss no more than one quiz and still pass the course. Collectively, the quizzes will be worth 40% of your overall grade.
- **The Paper.** The paper should be 8-10 double-spaced pages. It will be due by 5pm, Monday, December 2 but can be submitted earlier. It will be worth 50% of your overall grade. Paper topics will be distributed well in advance of the due date.
- **Submission of Papers.** Students will be expected to submit papers electronically, via turnitin.com on the course website.
- **Late Papers.** If students require an extension on the paper, they must request and justify an extension in advance via email. Late papers (for which an extension was not approved in advance) will lose one full grade for every day (24-hour period) late. For instance, a paper that would have received an A- if handed in on time will receive a C- if handed in two days (more than 24 hours and not more than 48 hours) late.
- **Attendance and Participation.** Attendance will not be taken, but students are expected to attend class and participate on a regular basis, and I will take note of how regularly students attend and participate. Attendance and participation will count for 10% of your overall grade.
- **Grade Breakdown.** As percentages of your total grade: quizzes = 40%, the paper = 50%, and attendance and participation = 10%.
- **Plagiarism.** Students should note that plagiarism is a violation of the Principles of Academic Integrity (<http://senate.ucsd.edu/manual/appendices/app2.htm>). Anyone determined to have violated these principles will fail the assignment and the course and will be reported to the Office of Academic Integrity. If you have any doubts about what constitutes plagiarism or other academic misconduct, please consult with me *in advance*.

BOOKS

There are no books that you are required to purchase for the course. However, there is one book that contains a number of required and recommended readings.

Joshua Dressler, *Understanding Criminal Law*, 7th ed. (LexisNexis, 2015).

I have a pdf of this book, which I will post to the course website. Students who want a hard copy of this book should be able to find reasonably inexpensive used copies online (e.g. through Amazon).

READINGS

The reading assignments are listed on the Syllabus. I will regularly indicate where we are on the Syllabus (remind me if I don't). It is very important to read the assignments on time, and it is helpful if you have access to the texts we are discussing to class.

WEBSITE

Course materials and handouts will be available on the course website available through Course Finder (<https://coursefinder.ucsd.edu>). Students enrolled in the course should have automatic access to the website. You will be expected to have access to print or electronic versions of these handouts during class. You should check periodically to make sure that you have current versions of all the handouts (which are revised or updated periodically).