**TOPICS IN PHILOSOPHY OF LAW**

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This is not a course in ‘general jurisprudence’ – we will not, except tangentially, be concerned with the foundational questions of what law is, how laws get their normative power, and so on. Instead our focus will be on specific metaphysical, epistemological and moral questions that emerge, or are suggested by, the law as actually practiced.

There is one (or exceptionally two) required readings for each week. We won’t spend the whole class on them, but I’ll be using them as a jumping-off point for a wider discussion so please at least skim them in advance of the class. Further reading is included for those interested in diving deeper into a topic afterwards.

**Week 1: Causation in the Law**

Key Question

*In what sense, if any, do the actions of intervening agents ‘break the chain of causation’ between defendant and outcome?*

Required reading

* Zimmerman, Michael (1985). [Intervening Agents and Moral Responsibility](https://www.jstor.org/stable/2219471?refreqid=excelsior%3Aa3275665409be344378ca7034ce806e3&seq=1#metadata_info_tab_contents). *The Philosophical Quarterly 35*(141), 347-358.

Further reading

For a clear and efficient introduction to the rules on causation in tort and criminal law, see:

* Steel, Sandy (2014). [Causation in Tort and Crime: Unity or Divergence?](https://ezproxy-prd.bodleian.ox.ac.uk:2117/core/books/unravelling-tort-and-crime/causation-in-tort-law-and-criminal-law-unity-or-divergence/ED0CFD47CDF012417733369F486F0491/core-reader), especially sections 1-3. In Matthew Dyson (ed.), Unravelling Tort and Crime, Cambridge: CUP.

And on the rules of ‘intervening causation’ specifically:

* Hodgson, Douglas (2008). *The Law of Intervening Causation*. Routledge.

The classic discussion of causation in the law:

* Hart, H.L.A. and Honoré, Tony (1985). [*Causation in the Law (2nd edition)*](https://ezproxy-prd.bodleian.ox.ac.uk:2196/view/10.1093/acprof:oso/9780198254744.001.0001/acprof-9780198254744). Oxford: OUP.

For a quite different approach, see:

* Stapleton, Jane (2008). [Choosing What We Mean by “Causation” in the Law](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj8wOi1tYfuAhV-UxUIHRXmAFIQFjAAegQIBBAC&url=https%3A%2F%2Fscholarship.law.missouri.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D3773%26context%3Dmlr&usg=AOvVaw0gqp8i1RrINNwed2sBtoMB). *Missouri Law Review 73*(2), 433-480.

And for my two cents, see [here](https://www.cambridge.org/core/journals/legal-theory/article/partial-liability/F8BC0896003C09F8DC1929255F29EECD) and [here](https://link.springer.com/article/10.1007%2Fs10670-016-9805-y).

**Week 2: Complicity**

Key Question

*Should accomplices be found guilty of crimes they help or encourage others to commit?*

Required Reading

* Moore, Michael (2009). [Causing, Aiding and the Superfluity of Accomplice Liability](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiUrISZuofuAhUSUhUIHZq8AVwQFjAAegQIBBAC&url=https%3A%2F%2Flaw.upenn.edu%2Fjournals%2Flawreview%2Farticles%2Fvolume156%2Fissue2%2FMoore156U.Pa.L.Rev.395(2007).pdf&usg=AOvVaw1rd6VyzVk4llVYnNHAVjqH). *University of Pennsylvania Law Review* 156: 395-452.

Further reading

For a variety of other views on the topic, see:

* Kutz, Christopher (2007). [Causeless Complicity](https://link.springer.com/article/10.1007%2Fs11572-006-9026-6). *Criminal Law and Philosophy* *1*(3), 289-305.
* Gardner, John (2007). [Complicity and Causality](https://link.springer.com/article/10.1007%2Fs11572-006-9018-6). *Criminal Law and Philosophy* *1*(2), 127-141.
* Bagshaw, Roderick (2011). [Causing the Behaviour of Others and Other Causal Mixtures](https://ezproxy-prd.bodleian.ox.ac.uk:2659/book/perspectives-on-causation/ch17-causing-the-behaviour-of-others-and-other-causal-mixtures). In Richard Goldberg (ed.), *Perspectives on Causation*, Hart Publishing.

And for my two cents: [here](https://www.dropbox.com/s/nk7dv70m499r7w8/Against%20Accomplice%20Liability.docx?dl=0).

**Week 3: Statistical Evidence and Legal Proof**

Key Question

*What does it mean, exactly, to establish something ‘beyond reasonable doubt’ or ‘on the balance of probabilities’?*

Required reading

* Moss, Sarah (forthcoming). [Knowledge and Legal Proof](http://www-personal.umich.edu/~ssmoss/Moss%20-%20Knowledge%20and%20Legal%20Proof.pdf). In Tamar Szabó Gendler and John Hawthorne (eds.), *Oxford Studies in Epistemology, Volume 7*, Oxford: OUP.

Further reading

For a selection of work on the topic of statistical evidence, see:

* Thomson, Judith Jarvis (1986). [Liability and Individualized Evidence](https://www.jstor.org/stable/1191633?seq=1#metadata_info_tab_contents). *Law and Contemporary Problems 49*, 199-219.
* Gardiner, Georgi (2018). [Legal Burdens of Proof and Statistical Evidence](https://philpapers.org/go.pl?id=GARTBO-6&u=https%3A%2F%2Fphilpapers.org%2Farchive%2FGARTBO-6.pdf). In David Coady and James Chase (eds.), *The Routledge Handbook of Applied Epistemology*, Routledge.
* Hedden, Brian and Colyvan, Mark (2019). [Legal Probabilism: A Qualified Defence](https://onlinelibrary.wiley.com/doi/epdf/10.1111/jopp.12180). *The Journal of Political Philosophy 27*(4), 448-468.

**Week 4: Algorithms in the Law**

Key Question

*Should judges be replaced with algorithms?*

Required reading

* Wystra, Stephanie (2018). [Philosopher’s Corner: What is “Fair”? Algorithms in Criminal Justice](https://issues.org/perspective-philosophers-corner-what-is-fair-algorithms-in-criminal-justice/). *Issues in Science and Technology 34*(3).
* Basu, Rima (forthcoming). [The Specter of Normative Conflict: Does Fairness Require Inaccuracy?](https://philpapers.org/go.pl?id=BASTSO-14&u=https%3A%2F%2Fphilpapers.org%2Farchive%2FBASTSO-14.pdf) In Erin Beeghly and Alex Madva (eds.), An Introduction to Implicit Bias: Knowledge, Justice, and the Social Mind, Routledge.

Further reading

Coming soon...

**Week 5: Punishment I: The Justification of Punishment**

Key Question

*What justifies state punishment?*

Required reading

Tadros, Victor (2011). *The Ends of Harm: The Moral Foundations of the Criminal Law*, [chapter 12](https://ezproxy-prd.bodleian.ox.ac.uk:2196/view/10.1093/acprof:oso/9780199554423.001.0001/acprof-9780199554423-chapter-12). Oxford: OUP.

Further reading

For a helpful introduction to different alternative ‘theories of punishment’, see:

* Wood, David (2010). [Punishment: Consequentialism](https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1747-9991.2010.00287.x?saml_referrer). *Philosophy Compass 5/6*, 455-469.
* Wood, David (2010). [Punishment: Nonconsequentialism](https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1747-9991.2010.00288.x). *Philosophy Compass 5/6*, 470-482.

And here are two classic papers on the topic:

* Hart, H.L.A. (1959). [Prolegomenon to the Principles of Punishment](https://www.jstor.org/stable/4544619?seq=1#metadata_info_tab_contents). *Proceedings of the Aristotelian Society* *60*, 1-26.
* Feinberg, Joel (1965). [The Expressive Theory of Punishment](https://www.jstor.org/stable/27901603?seq=1#metadata_info_tab_contents). *The Monist* *49*, 397–423.

**Week 6: Punishment II: Prepunishment and Penal Substitution**

Key Question

*What would be wrong with punishing someone for a crime before they commit it? What would be wrong with allowing convicted criminals to enlist others to serve their sentences for them?*

Required reading

* New, Christopher (1992). [Time and Punishment](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjD2frdvYfuAhVPRhUIHXDCD-AQFjAAegQIBBAC&url=https%3A%2F%2Fwww.jstor.org%2Fstable%2F3328880&usg=AOvVaw3Sz0Wx-aURfXaqzNfDCKue). *Analysis 52*(1), 35-40.
* Lewis, David (1997). [Do we Believe in Penal Substitution?](https://www.tandfonline.com/doi/abs/10.1080/05568649709506566) *Philosophical Papers 26*(3), 203-209.

Further reading

A nice paper that touches on both topics (and indeed on the material from week 3 as well):

* Sorensen, Roy (2006). [Future Law: Prepunishment and the Causal Theory of Verdicts](https://www.jstor.org/stable/3506187?casa_token=5bUyJLsiSMEAAAAA%3AYjKWZuuvqodtYcHkuEf0usaBUMiRDJ9Lwl6j1IYWEqLwrcW0IHmGVr626vhzZyyhYtrMfpLIk8NPfr_nIFbkRg_d_grINvObY4sT5J42t3pOQQhbyA&seq=1#metadata_info_tab_contents). *Noûs 40*(1), 166-183.

And another provocative argument on the same theme:

* Tadros, Victor (2020). [Distributing Responsibility](https://onlinelibrary.wiley.com/doi/full/10.1111/papa.12163). *Philosophy and Public Affairs 48*(3), 223-261.

**Week 7: Luck in the Law**

Key Question

*Why do we punish successful criminal attempts more than unsuccessful ones?*

Required reading

* Lewis, David (1989). [The Punishment That Leaves Something to Chance](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiK4sDqvYfuAhXRRBUIHQc8ASwQFjAAegQIAhAC&url=https%3A%2F%2Fwww.jstor.org%2Fstable%2F2265191&usg=AOvVaw334liJX945kmrGm1TzBwsS). *Philosophy & Public Affairs 18*(1), 53-67.

Further reading

On the role of luck in tort law, see:

* Goldberg, John and Zipursky, Benjamin (2007). [Tort Law and Moral Luck](http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=3071&context=clr). *Cornell Law Review* *92*(6), 1123-1176.

A good recent handbook article:

* Herstein, Ori (2020). [Legal Luck](https://ezproxy-prd.bodleian.ox.ac.uk:2686/chapters/legal-luck-ori-herstein/e/10.4324/9781351258760-37?context=ubx&refId=47fcf279-ec23-4dbc-8fd6-488d555411a0). In Ian Church and Robert Hartman (eds.), *The* Routledge Handbook to the Philosophy and Psychology of Luck. Routledge.

**Week 8: TBC**

Mop-up session / extra discussion / student presentations, to be determined.