

Moral Issues in Criminal Law

Philosophy 6310

Fall 2016

Course Description: Criminal law aims to punish those who are responsible for wrongdoing. This aim gives rise to two classes of affirmative defense. First, the accused can argue that they are not responsible for their actions. Second, they can argue that, while they have otherwise satisfied the elements of a crime, no wrongdoing occurred. This first category suggests that the accused should be *excused* from punishment—either in whole or in part—and trades on doctrines such as duress, intoxication, and insanity. The second category suggests that the accused’s actions were *justified*, and trades on doctrines such as self-defense and necessity. This seminar will therefore consider the related doctrines of justification and excuse, both by review of primary case law and secondary sources.

Professor: Dr. Fritz Allhoff
Thursday 1:00-2:00; 3006 Moore Hall
387-4503 (w)

Seminar: Thursday 2:00-4:30; Moore 3014

Books: Sanford Kadish, Stephen Schulhofer, Carol Steiker, and Rachel Barkow, *Criminal Law and Its Processes: Cases and Materials*, 9th ed. (New York: Wolters Kluwer, 2012).

Additional materials will be made available as needed.

Electronics: Aside from anything necessary for presentations, please leave laptops, tablets, and smartphones outside of the seminar room; bring hard copies of readings.

Grading:	Attendance/Participation	15%
	Reaction Papers	15%
	Presentation	10%
	Annotated Research Bibliography	10%
	Research Paper	50%

Attendance/Participation: Students are required to attend each seminar and to participate. If students miss a seminar, they may turn in a 1000-word reaction to the assigned readings (half exegetical, half evaluative) at the beginning of the following seminar to avoid a zero for the previous week. They may do this, at most, two times.

Reaction Papers: Over the course of the seminar, students are required to submit six reaction papers; again, these should be 1000 words, half exegetical, half evaluative. Reaction papers submitted for missed seminars will be counted toward attendance/participation, not this requirement. Students may not submit a reaction paper over content that they are presenting (see below), but they may submit a reaction paper the same week as their presentation if the reaction paper is on different content (e.g., someone else’s presentation). Reaction papers are due to my mailbox—i.e., not by email, not to my office—by noon on the day of seminar.

Presentations: Students will be assigned one presentation each over the course of the semester. Good presentations will not merely trace through the assigned reading, but will make connections across readings and promote broad discussion. PowerPoint is optional but encouraged. (Note that approximately a dozen presentations are suggested below through optional readings; other presentations can be scheduled by mutual agreement between the professor and students.)

Annotated research bibliography: Before writing their research papers, students will compile a research bibliography that will support the research for their projects. There should be at least fifteen academic sources in this bibliography, at least half of which should be from after 2000. An additional five sources should be court decisions; the timing of these is unimportant, but they should not have been overturned. For each of these twenty sources, students should provide full bibliographic information as well as a 100-word précis.

Research paper: Students will incorporate the annotated research bibliography into a research paper, which should be no fewer than 6,000 words, inclusive of footnotes and exclusive of bibliography. Students wishing to write longer papers (e.g., 9,000+ words) may discuss the prospects of an additional credit with the professor.

Papers should be submitted in 11 point font for the body—10 point for the footnotes—with Calibri or Cambria preferred. Both the body and footnote text should be fully justified. Spacing should be double, except for block quotes in single. At least twenty sources and forty footnotes are strongly encouraged. Legal sources should be formatted according to Bluebook; academic sources may be formatted according to students' preferences.

Statement on Academic Honesty: You are responsible for making yourself aware of and understanding the policies and procedures in the Graduate Catalog (pp. 25-27) that pertain to Academic Honesty. These policies include cheating, fabrication, falsification and forgery, multiple submission, plagiarism, complicity and computer misuse. If there is reason to believe you have been involved in academic dishonesty, you will be referred to the Office of Student Conduct. You will be given the opportunity to review the charge(s). If you believe you are not responsible, you will have the opportunity for a hearing. You should consult with me if you are uncertain about an issue of academic honesty prior to the submission of an assignment or test.

Week	Date	Topic	Readings
1	9/8	Preliminaries	N/A
2	9/15	Justification and Excuse	<p>Paul Robinson, "Criminal Law Defenses: A Systematic Analysis", §§ I-IIC [67]</p> <p>Optional [1]: Kent Greenawalt, "Distinguishing Justifications from Excuses" [20]</p> <p>Optional [2]: Douglas Husak, "Justifications and the Criminal Liability of Accessories" [31]</p> <p>Optional [3]: Marcia Baron, "Justifications and Excuses" [20]</p>
3	9/22	Necessity	<p>Model Penal Code § 3.02 [1] [Kadish et al., p. 1208]</p> <p>Model Penal Code § 3.02 commentary [2] [Kadish et al., pp. 889-90]</p> <p><i>Regina v. Dudley and Stephens</i>, 14 Q.B.D. 273 (1884) [6] [Kadish et al., pp. 83-89]</p> <p>Fritz Allhoff, "Homicide on the High Seas: <i>Regina v. Dudley and Stephens</i>" [33]</p> <p>Larry Alexander, "Lesser Evils: A Closer Look at the Paradigmatic Justification" [33]</p>

4	9/29	Prisons, Marijuana, Protests, and Torture	<p><i>People v. Unger</i>, 362 N.E.2d 319 (Ill. 1977) [4] [Kadish et al., pp. 885-88]</p> <p>Kadish et al., pp. 890-95 [6]</p> <p><i>United States v. Schoon</i>, 971 F.2d 193 (9th Cir. 1992) [3] [Kadish et al., pp. 896-98]</p> <p>Optional [4, 5]: Matthew Lippman, “The Necessity Defense and Political Protest” [36]</p> <p>Fritz Allhoff, “<i>Ex Ante</i> and <i>Ex Post</i> Justifications” [20]</p>
5	10/6	Self-Defense	<p>Model Penal Code §§ 3.04-3.06 [4] [Kadish et al., pp. 1209-12]</p> <p><i>U.S. v. Peterson</i>, 483 F.2d 1222 (D.C. Cir. 1973) [16]</p> <p>Kimberly Kessler-Ferzan, “Justifying Self-Defense” [39]</p>
6	10/13	Subjective and Objective Standards	<p><i>People v. Goetz</i>, 497 N.E.2d 41 (N.Y. 1986) [5] [Kadish et al., pp. 819-23]</p> <p>Jody D. Armour, “Race Ipsa Loquitur: Of Reasonable Racists, Intelligent Bayesians, and Involuntary Negrophobes” [37]</p> <p>Kadish et al., pp. 827-32 [6]</p>

7	10/21	Battered Women's Syndrome	<p>Kadish et al., pp. 837-40 [3]</p> <p><i>State v. Kelly</i>, 478 A.2d 364 (N.J. 1984) [6] [Kadish et al., pp. 832-37]</p> <p><i>State v. Norman</i>, 378 S.E.2d 8 (N.C. 1989) [5] [Kadish et al., 848-52]</p> <p>Richard A. Rosen, "On Self-Defense, Imminence, and Women Who Kill Their Batterers" [41]</p>
8	11/3	Imminence in Other Contexts	<p>Optional: <i>State v. Schroeder</i>, 261 N.W.2d 759 (Neb. 1978) [4]</p> <p>Optional [6]: <i>Ha v. State</i>, 892 P.2d 184 (Alaska App. 1995) [17]</p> <p>Fritz Allhoff, "Self-Defense without Imminence" [41]</p> <p>Optional [7, 8]: Kimberly Kessler-Ferzan, "Defending Imminence: From Battered Women to Iraq" [50]</p>
9	11/10	Duress	<p>[to be rescheduled]</p> <p>Model Penal Code § 2.09 [1] [Kadish et al., pp. 1206-07]</p> <p><i>State v. Toscano</i>, 378 A.2d 755 (N.J. 1977) [4] [Kadish et al., pp. 924-27]</p> <p>Model Penal Code § 2.09 commentary [4] [Kadish et al., pp. 927-32]</p> <p>Fritz Allhoff, "Duress and Future Harms" [18]</p> <p>Optional [9, 10]: Peter Westen and James Mangiafico, "The Criminal Defense of Duress: A Justification, Not an Excuse—And Why It Matters" [119]</p>

10	11/17	Intoxication	<p>Model Penal Code § 2.08 [1] [Kadish et al., p. 1206]</p> <p><i>People v. Hood</i>, 462 P.2d 370 (Cal. 1969) [3] [Kadish et al., 944-46]</p> <p><i>State v. Stasio</i>, 396 A.2d 1129 (N.J. 1979) [3] [Kadish et al., pp. 946-48]</p> <p>Kadish et al., pp. 948-49 [2]</p> <p><i>Regina v. Kingston</i>, 4 All E.R. 373 [3] [Kadish et al., pp. 954-56]</p> <p><i>Montana v. Egelhoff</i>, 518 U.S. 37 (1996) [27]</p> <p>Optional [11]: Larry Alexander, “The Supreme Court, Dr. Jekyll, and the Due Process of Proof” [28]</p>
11	11/21	Addiction	<p><i>Robinson v. California</i>, 370 U.S. 660 (1962) [13]</p> <p><i>Powell v. Texas</i>, 392 U.S. 514 (1968) [23]</p> <p>Douglas Husak and Emily Murphy, “The Relevance of Neuroscience of Addiction to Criminal Law” [24]</p>
12	11/24	[Thanksgiving Break]	N/A
13	12/1	<p>Insanity</p> <p>[Research Bibliography Due in my mailbox by 12:00 pm]</p>	<p>Model Penal Code §4.01 [1] [Kadish et al., p. 1215]</p> <p>Kadish et al., pp. 958-97 [40]</p> <p>Optional [12]: Gary Watson, “The Insanity Defense” [17]</p>

14	12/8	Neuromitigation	Owen D. Jones et al., pp. 42-61 [20] Optional [13]: Joshua Greene and Jonathan Cohen, "For the Law, Neuroscience Changes Nothing and Everything" [11] Optional [14]: Nicole Vincent, "Neuroimaging and Responsibility" [15]
-	12/16	[Research Paper Due in my mailbox by 12:00 pm]	