

## ***PHIL 457D: Problems in Law and Morality***

### ***Liberty and Justice***

Fall 2009

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**Office Hours:** Tues. 10:00 AM – Noon; Wed. 1:00 PM – 2:00 PM

I will be in my office and available during office hours, but you can make appointments to see me at other times. My preference is that we make appointments by email, and have substantive discussions face-to-face.

#### **Course Description**

A government's regulation of our affairs through law seems to require justification. We don't tend to think that a government can do whatever it wants to us for any reason. Part of this conviction seems to be based in a commitment to personal liberty – that is, many think that there are moral limitations on government interference based on a principle that each individual ought to be able to act freely within a certain (fairly large) sphere of activity (e.g., one ought to be able to conduct one's private life, express oneself, and dispose of one's property without government interference). One of our tasks in this course will be to get a clear understanding of what a commitment to liberty amounts to, what would ground it, and, consequently, what it implies concerning a state's legitimate exercise of legal authority.

In investigating the moral ideal of liberty, we will come into contact with an apparently competing principle that most think ought to guide the lawful activity of the state: distributive justice. Very generally, distributive justice concerns how various goods (natural resources, property, opportunities, social powers, etc.) that society can distribute in one way or another, ought to be distributed. Justice and liberty could be at odds with each other since it may turn out that in order to give a group what they are entitled to as a matter of justice, a government may have to restrict the freedom of some other group or everyone (e.g., providing 'equality of opportunity' may require aggressive taxation of the relatively wealthy, or providing 'equal influence on state affairs' may require restricting certain forms of expression). This is a possibility, anyhow. A central challenge of this course will be to seriously consider what distributive justice requires, its relationship to liberty, and what we should do if the two ideals actually do compete.

In general, our attention in this course will be directed at answering two related questions. First, to what extent can a state legitimately regulate our affairs through law? Second, what is it for a state to be just and how far may it pursue, through legal mechanisms, distributive justice?

## **Objectives**

The student will:

- Be familiar with some of the recent important philosophical work on the topics of liberty and distributive justice
- Develop and be able to articulate cogent and defensible views on legitimate governance
- Improve ability to write analytical papers
- Develop an ability to read and critically consider difficult texts
- Improve ability to reason through and intelligently talk about complex problems generally

## **Readings**

Students are expected to show up to class prepared to discuss, and answer questions concerning the assigned reading. This is a seminar, so there will be a focus on student to student and instructor to student dialogue. The class discussion will center on students addressing the issues raised by the texts. Successful participation in class, then, requires familiarity with the readings for the course.

The required texts for purchase are:

H.L.A. Hart, *Law, Liberty, and Morality* (Stanford U. Press, 1963)

John Rawls, *Justice as Fairness: A Restatement* (Harvard U. Press, 2001)

Susan Moller Okin, *Justice, Gender, and the Family* (Basic Books, 1989)

Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, and Species Membership* (Harvard U. Press, 2006)

In addition to these texts, many of the readings will be available on Electronic Reserves [ER], Library Reserves [LR]. Links to [ER] sources are available on Blackboard. Items marked [LR] are available at the Reserves desk in the library.

## **Requirements**

Grade Breakdown:

Short Paper (5 – 7 pages)	20%
Long Paper (15 – 20 pages)	40%
Final Exam	25%
Participation	15%

Papers: Students will be required to write one short and one longer paper. Paper topics for the short papers will be distributed at least two weeks before the due date. Possible paper topics for the longer paper will be distributed at least three weeks before the initial due date. Students are permitted to develop their own topic for the longer paper – though any topic *must* be approved by me. If you are interested in developing your own topic, we should meet outside of class to discuss it. In any case, you must declare your topic in writing and turn in a polished draft of your long paper according to the schedule below. *The paper will be returned to you with comments*

*for revision.* I encourage you to meet with me to discuss these comments and how to proceed with revisions, though this is not mandatory. You will have about ten days to complete revisions and turn in your final paper.

In general, papers will be assessed on the basis of: (1) accuracy and completeness in portraying the material in question, and (2) the development of a well-reasoned assessment of that material.

Students are required to maintain a digital backup of all submitted work until the end of the semester. I reserve the right to request a digital copy of any work submitted by the student.

Final Exam: Students are responsible for all assigned material up to the day of the exam (i.e., the final exam is cumulative).

Participation: Students will be assessed on their contributions in class. The grade will be based on the frequency with which students provide valuable verbal contributions to the class. Such contributions include informed responses to instructor questions, participation in classroom discussions and raising relevant and cogent questions.

### **Course Policies**

Attendance: Attendance in class is mandatory. Students should arrive promptly at the beginning of class with the assigned reading for the day in hand. Students are permitted (1) unexcused absence without penalty. Each additional unexcused absence will result in the student's final grade being reduced by two-thirds a letter grade (e.g. a B becomes a C+).

Academic Honesty: Plagiarism and other forms of academic misconduct will be dealt with harshly in accordance with Harpur College policies. The **Student Academic Honesty Code** can be found at: <http://bulletin.binghamton.edu/integrity.htm>.

### **Schedule of Readings**

The following plan is subject to revision - I will inform the class of any changes as we go. Listed on the left are the dates of the lectures, on the right are the readings that will be discussed on those dates. Notice that for many classes, multiple readings from multiple sources are assigned.

<b>Date:</b>	<b>Reading:</b>
<b>Sep. 1</b>	Introduction to Topics of the Course; Overview of Utilitarianism and Mill's <i>On Liberty</i>
<b>Sep. 8</b>	H.L.A. Hart, <i>Law, Liberty, and Morality</i>
<b>Sep. 15</b>	Catherine MacKinnon, "Desire and Power" from <i>Feminism Unmodified</i> , 48 - 62 [ER] MacKinnon, "Pornography: On Morality and Politics" from <i>Toward a Feminist Theory of State</i> , 195-214 [ER] Ronald Dworkin, "Pornography and Hate" from <i>Freedom's Law</i> , 214-226 [ER] Dworkin, "MacKinnon's Words" from <i>Freedom's Law</i> , 227-243 [LR]
<b>Sep. 22</b>	Isaiah Berlin, "Two Concepts of Liberty" from <i>Four Essays on Liberty</i> , 118-172 [ER] Charles Taylor, "What's Wrong with Negative Liberty?" from <i>Philosophy and Human Sciences</i> , 211-229 [ER]
<b>Sep. 29</b>	John Rawls, <i>Justice as Fairness: A Restatement</i> , 1-79 <b>Short Paper Assigned</b>
<b>Oct. 6</b>	John Rawls, <i>Justice as Fairness: A Restatement</i> , 80-168
<b>Oct. 13</b>	Robert Nozick, "Distributive Justice" from <i>Anarchy, State, and Utopia</i> , 149-231 [ER] <b>Short Paper Due</b>
<b>Oct. 20</b>	G.A. Cohen, "Robert Nozick and Wilt Chamberlain" from <i>Self-Ownership, Freedom and Equality</i> , 19-37 [ER] Cohen, "Self-Ownership, World-ownership, and Equality" from <i>Self-Ownership, Freedom and Equality</i> , 67-91 [LR] Cohen, "Justice, Incentives, and Selfishness" from <i>If You're an Egalitarian, How Come You're So Rich?</i> , 117-133 [ER]
<b>Oct. 27</b>	Michael Sandel, "Justice and the Good" from <i>Liberalism and the Limits of Justice</i> , 133-174 [ER] Will Kymlicka, "The Value of Cultural Membership" from <i>Liberalism, Community, and Culture</i> , 162-181 [ER] <b>Long Paper Assigned</b>
<b>Nov. 3</b>	Will Kymlicka, "Justice and Minority Rights" from <i>Multicultural Citizenship</i> , 107-130 [ER] Susan Moller Okin, "Is Multiculturalism Bad for Women?" from <i>Is Multiculturalism Bad for Women</i> , 9-24 [ER] Okin, <i>Justice, Gender, and the Family</i> , 3-40 <b>Long Paper Topic Due</b>
<b>Nov. 10</b>	Okin, <i>Justice, Gender, and the Family</i> , 41-133
<b>Nov. 17</b>	Okin, <i>Justice, Gender, and the Family</i> , 134-186 <b>Long Paper Draft Due</b>
<b>Nov. 24</b>	Martha C. Nussbaum, <i>Frontiers of Justice</i> , 9-95
<b>Dec. 1</b>	Nussbaum, <i>Frontiers of Justice</i> , 96-223 <b>Long Paper Draft Returned with Comments for Revision</b>
<b>Dec. 8</b>	Nussbaum, <i>Frontiers of Justice</i> , 224-324
<b>Dec. 10</b>	<b>Long Paper Final Draft Due in my Office by 5:00 PM</b>
<b>Dec. 15</b>	<b>Final Exam, 7:00 - 9:00 PM</b>