

## Theories of Justice

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Office Hours: Tuesday 9:30-11:30am or by appointment

### Course Description

Political life is rife with conflict regarding issues of justice. This includes disputes regarding the legitimate role of government and the appropriate distribution of resources. Consider the following questions:

- Is economic inequality unjust? Ever? Always? Why?
- Is government justified in restricting your freedom if it does so in order to improve your life (by, say, banning large sodas, forcing you to wear a seatbelt, or making heroin illegal)?
- Is it justifiable for the state to take the resources of wealthy citizens in order to benefit their poorer compatriots? Must the state do so in order to be legitimate?
- How should a commitment to political equality guide attempts at campaign finance reform?
- What are human rights? Where do they come from? Are they a culturally insensitive Western project?

Since most of us hold views about the appropriate answers to such questions and believe that we can defend these views by providing reasons on their behalf, argument about questions of justice is an ordinary feature of political life.

Political theory is, in two ways, the natural extension of such argument. First, by working such arguments out in more careful detail, political theorists hope to present stronger and more defensible versions of them – ones that can avoid the objections and errors to which our first inclinations may be vulnerable.

Second, in answering such questions, we often rely on concepts – such as justice, rights, legitimacy, liberty, and equality – that can be understood in a wide variety of ways. By carefully distinguishing between different uses of these concepts, political theorists hope to help clarify ordinary democratic debate. In these ways, political theory is continuous with ordinary political life: it simply hopes to bring

greater clarity and sophistication to the arguments about justice that underlie ordinary political disagreements and disputes.

In this class, we will study the justifications for, and implications of, three competing paradigms through which one might understand the questions of justice posed above: utilitarianism, libertarianism (or classical liberalism), and liberal egalitarianism. We will read canonical defenses of these positions, and then discuss the application of these theories to a range of controversial public policy questions (including the death penalty, distributive justice, racial inequality, and campaign finance).

This course aims to help students think more rigorously about questions of justice by approaching them from the perspective of influential theories of justice, as well as by gaining a clearer understanding of competing conceptions of liberty and equality.

### **Required Texts**

Students should purchase the following texts:

- Ronald Dworkin *Sovereign Virtue* (Harvard University Press).
- Milton Friedman *Capitalism and Freedom* (University of Chicago Press).
- Glenn C. Loury *The Anatomy of Racial Inequality* (Harvard University Press).
- John Stuart Mill *On Liberty and Other Essays* (Oxford World Classics).
- John Rawls *A Theory of Justice* (Harvard University Press).

Additional readings are available on the course website.

### **Requirements & Grading**

Grades will be made up of four factors.

1. Midterm Exam (30%)
2. Reading Responses (30%)
3. Final Exam (30%)
4. Participation (10%)

#### *Reading Responses:*

Students are required to write six reading response essays over the course of the semester (selecting from the opportunities listed on the syllabus). Adequate reading requires active engagement with the arguments presented by the author.

Students are expected to read the assignments with sufficient care to be able to explain the main arguments, as well as raise questions and criticisms about them.

The 'reading questions' listed alongside the weekly assignments should help guide students to the central issues in each week's readings. Students are expected to come to class prepared to offer thoughtful responses to those questions and to participate in discussion and argument about them.

Part of the goal of reading responses is to facilitate this level of interaction with the readings. In these responses, students are to develop a *criticism* of the readings. It may sometimes be helpful to relate the readings to one another: for example, does Author 2 offer effective criticisms of Author 1? Why or why not? The responses are an opportunity to critically and briefly engage with central arguments in the day's readings.

Do not summarize the readings. Focus, instead, on developing a criticism of the author's position. Ideally, responses will clearly and concisely develop a criticism or raise an important difficulty with one of the day's readings. They should have a clear and controversial thesis, be clearly argued, and carefully proofread.

Students are expected to hand in *hard copies* of reading responses – which are to be no more than 900 words – at the beginning of class. I will not accept e-mailed or late reading responses.

Responses will be graded on a [- to +] scale. The following schema provides a rough guideline of expectations.

- a. Minus: A response that fails to engage with the readings.
- b. Check Minus: A response that misunderstands key points in the readings or does not show evidence of understanding the line of argument pursued by the author.
- c. Check: A response that shows that the reading was understood and offers some sort of comment, feeling, or question about it. These responses may suffer from not being clearly developed or failing to anticipate obvious lines of response. Average work.
- d. Check Plus: A response that understands the reading and plausibly attempts to show that the author's arguments for his/her position are not successful. Well-organized and to the point.

- e. Plus: A response that very persuasively and creatively challenges the author's argument for his/her position. Well-organized and to the point. Truly outstanding work.

*Participation:*

Attendance, *thoughtful* participation and respectful engagement with the ideas of fellow students are a means not only towards one's own learning, but also an important element of the seminar's overall success. Thus, one has to *earn* credit for participation by engaging in classroom discussion in an active and *informed* manner. This entails coming prepared with informed questions, criticisms and comments on the readings. Participation grades may also reflect performance on in-class activities or reading quizzes.

Laptops, cell phones, and other electronic devices are detrimental to the seminar environment and will not be permitted in class. They should be turned off and kept out of view during class. Accordingly, students are expected to bring paper copies of the reading to class. The reasons for this are straightforward. Most importantly, web-enabled devices distract all of us from the substantive engagement that is critical to a successful seminar.

*Academic Integrity:*

It is expected that all assignments will be solely the work of the student who turns them in. As such, students should be careful to reference the ideas and words of others. Plagiarism and other forms of academic dishonesty will not be tolerated.

**Course Schedule**

**1. Introduction (9/7)**

**2. Utilitarianism I: Two Theories of the Good (9/14)**

Introductory Reading about Political Theory

- a. Amy Gutmann "The Challenge of Multiculturalism in Political Ethics"  
*Philosophy & Public Affairs* 22/3 (Summer, 1993), pp. 171-182.

Readings about Utilitarianism

- b. Will Kymlicka *Contemporary Political Philosophy* pp. 10-12
- c. Jeremy Bentham *The Principles of Morals and Legislation* pp. 1-7 and 29-32.
- d. John Stuart Mill *Utilitarianism* pp. 136-143.

## Applications

- e. Excerpts from *Bowers v. Hardwick* and *Lawrence v. Texas* pp. 1043-1045 and 1061-1066.
- f. Cass Sunstein and Adrian Vermeule "Is Capital Punishment Morally Required?" *Stanford Law Review* 2005, pp. 703-750.

Reading Questions: Why does Gutmann reject cultural relativism? Are the reasons that she gives persuasive? What does the distinction between higher and lower pleasures mean? How does it differentiate Mill's position from Bentham's? Would Mill need to agree with the ruling in *Bowers* and *Lawrence*? What about Bentham? Why or why not?

## Response Essay #1

### 3. Utilitarianism II: The Harm Principle (9/21)

- a. John Stuart Mill *On Liberty* pp. 5-93, 104-106, and 120-128.

Reading Questions: What is the "one very simple" principle defended by Mill and what kinds of policies does it prohibit? Why does Mill think that accepting such a principle will maximize utility?

### 4. Classical Liberalism (9/28)

- a. Milton Friedman *Capitalism & Freedom* Introduction, Ch. 1-2, 10 & 12.
- b. Philip Pettit "Prologue" *Just Freedom*

Reading Questions: What does Friedman mean by liberty? What does it mean to have a general right to liberty (as opposed to rights to particular liberties such as freedom of religion, freedom of speech, freedom of association, and so forth)? How does Friedman's understanding differ from Pettit's and which view is more attractive? Why? Is Friedman a utilitarian? Why or why not?

## Response Essay #2

### 5. Feminism & Markets in Women's Labor (10/5)

- a. Martha Nussbaum "American Women: Preferences, Feminism, Democracy" from *Sex and Social Justice*.
- b. Elizabeth Anderson "Is Women's Labor a Commodity?" *Philosophy & Public Affairs* 19/1 (1990), 71-92.
- c. Martha Nussbaum "Taking Money for Bodily Services" from *Sex and Social Justice*.
- d. Optional: Emily Bazelon "Should Prostitution be a Crime?" *The New York Times Magazine* May 5, 2016 <http://nyti.ms/26WF0wG>.

Reading Questions: Should democracies allow markets for sexual labor and surrogacy? Do the discussions of Nussbaum and Anderson show that there are reasons to limit the domain of the market society celebrated by Friedman?

Response Essay #3

**6. Libertarianism (10/12)**

- a. John Locke *Second Treatise* Ch. 5.
- b. Robert Nozick *Anarchy, State and Utopia* pp. 149-164 and 167-182.
- c. T.M. Scanlon "Libertarianism & Liberty" *Boston Review* 19 Oct. 2011.

Reading Questions: How does one come to have individual rights to property on Locke's account? What are the limits on individual accumulation? What is the minimal state and why does Nozick insist that it is the most extensive state that can be justified? What is Nozick's 'Wilt Chamberlain' example intended to show and does it succeed? Are Scanlon's criticisms of libertarianism effective criticisms of the positions defended by Nozick and Friedman? Why or why not?

Response Essay #4

**7. Historical Injustice (10/19)**

- a. Jeremy Waldron "Superseding Historic Injustice" *Ethics* 103/1 (1992), 4-28.
- b. A. John Simmons "Historical Rights and Fair Shares" *Law & Philosophy* 14/2 (1995), 149-184.
- c. Ta-Nehisi Coates "The Case for Reparations" *The Atlantic*

Reading Questions: Do injustices fade with time? Why or why not? Is Coates's case for reparations convincing? Why or why not? Must Nozick accept Coates's argument? Friedman?

Response Essay #5

**8. Midterm Exam (10/26)**

**9. Liberal Egalitarianism: Rawls (Main Ideas) (11/2)**

- a. *Theory of Justice*, §1-4, 11-15, 17, 22, and 24-26.

Reading Questions: What is the original position? What is the veil of ignorance? Why doesn't Rawls argue for a strictly equal distribution of resources? What is the difference between fair and formal equality of opportunity? Why does Rawls think that we should prefer the former? Why should we supplement fair equality of opportunity with the difference principle?

**10. Liberal Egalitarianism: Rawls (Interpreting the Difference Principle) (11/9)**

- a. *Justice as Fairness: A Restatement* §38-42 and Figure 1.
- b. G.A. Cohen "Incentives, Inequality, and Community" pp. 263-312 & 327-329.

Reading Questions: Is it wrong for the talented to demand higher incomes in return for labor that benefits the rest of the society? In doing so, are they like

Cohen's kidnapper? Does it matter *why* the talented demand higher pay (e.g., because they just wish to have more money than others or because they would prefer to spend time with their families)?

**11. Liberal Egalitarianism: What is the Point of Equality? (11/16)**

- a. Ronald Dworkin *Sovereign Virtue* pp. 1-16 and 65-92.
- b. Elizabeth Anderson "What is the Point of Equality?" *Ethics* (1999) 109/2, 287-315.

Reading Questions: Does Dworkin's principle better capture a concern with equality than Friedman's approach? Does Dworkin's principle better capture a concern with responsibility than Rawls's approach? Are the inequalities licensed by Dworkin's principle fair? Should we accept them?

**11/23 No Meeting, Thanksgiving**

**12. Political Equality & Campaign Finance (11/30)**

- a. Excerpts from *Buckley v. Valeo* and *Citizens United v. FEC*.
- b. Watch Lawrence Lessig's Ted Talk on Campaign Finance
  - i. [https://www.ted.com/talks/lawrence\\_lessig\\_we\\_the\\_people\\_and\\_the\\_republic\\_we\\_must\\_reclaim?language=en](https://www.ted.com/talks/lawrence_lessig_we_the_people_and_the_republic_we_must_reclaim?language=en)
- c. Joshua Cohen "Money, Politics, Political Equality" from *Philosophy, Politics, Democracy* pp. 268-301.
- d. Harry Brighouse "Political Equality and the Funding of Political Speech" *Social Theory and Practice* 21/3 (Fall 1995), pp. 473-500.
- e. Optional: Stephen Ansolabehere, et al. "Why is There so Little Money in U.S. Politics?" *The Journal of Economic Perspectives* 17/1 (Winter, 2003), pp. 105-130.

Reading Questions: What types of justifications do *Buckley* and *Citizens United* allow for restrictions on campaign-related spending? Does *Citizens* depend on viewing corporations as citizens? What is Lessig's core criticism of the Court's position? How might Cohen criticize Lessig's position? What is Brighouse's criticism of positions like Cohen's? Which position is most compelling? Why?

Response Essay #7

**13. Racial Stigma & Racial Justice (12/7)**

- a. Sendhil Mullainathan "Racial Bias, Even When We Have Good Intentions" *The New York Times* 3 January 2105
  - i. <http://nyti.ms/1yjW00G>
- b. Glenn C. Loury *The Anatomy of Racial Inequality* All.

Reading Questions: How are self-confirming stereotypes different from simple racial prejudice? What is racial stigma and how does it differ from the preceding? What is the difference between race egalitarianism and race

blindness? In what way does Loury think that his arguments show the need for the former? Is he right?

Response Essay #7

**14. Human Rights (12/14)**

- a. Michael Ignatieff "Human Rights as Idolatry" *The Tanner Lectures on Human Values* pp. 320-349.
- b. Joshua Cohen "Minimalism about human rights: the most we can hope for?" *Journal of Political Philosophy* 12.2 (2004): 190-213.
- c. Leif Wenar "Property Rights and the Resource Curse" *Philosophy & Public Affairs* Vol. 36, No. 1 (2008), pp. 2-32.

Reading Questions: What does Ignatieff mean when he calls human rights doctrine a form of idolatry? Why is this problematic and how does it suggest that a minimalist position is preferable? Why does Cohen think that substantive minimalism is too narrow and why would a view that insisted on a full-fledged Western conception of justice be too demanding? If Wenar is right, was NYU wrong to take money from the UAE to start NYU-AD? Is Wenar right?

Response Essay #8

**15. Exam (TBD)**