

THEORIES OF JUSTICE

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3 units

WH 314

Class meets Monday & Wednesday 10:30-11:45 a.m.

This seminar explores recent and contemporary work on social justice. We canvass the Lockean libertarianism of Robert Nozick's *Anarchy, State, and Utopia* and the liberal egalitarianism of John Rawls's *A Theory of Justice*, and then examine more recent contributions by academic lawyers and political philosophers including John Simmons, Richard Epstein, Ronald Dworkin, Judith Thomson, Martha Nussbaum, David Schmitz, and G. A. Cohen. Throughout the course, attention is paid to the implications of the theories under review for the proper shape of the law. Topics to be addressed include the conditions, if any, in which a state has the legitimate authority to command its subjects, the morally appropriate functions of the state, interpretations of the ideal of equality of opportunity, the right of individual self-defense in its bearing on just war theory, obligations to distant needy strangers, and various ways of integrating norms of individual responsibility into broadly egalitarian conceptions of social justice. Course requirements: a short essay mid-way through the term (5-7 pages) and a longer essay (15-20 pages) due at its end. This course may be used to fulfill the written work requirement.

Updated information about the course and downloadable copies of required readings other than the texts available in the bookstore can be found at the course web page. To reach the course web page, go to <http://philosophy.ucsd.edu/faculty/rarneson>

and scroll down to just above my family pictures. There you will find USD School of Law Courses and Theories of Justice under that heading.

This is a course in normative political theory. Its aim is to discover moral principles suitable for the regulation of a modern, diverse, democratic society. Here "suitable" principles are taken to be those whose implications for policy best satisfy our considered moral judgments, after reflection, all things considered. The course is text-centered; we'll spend considerable time examining the view of the main course authors.

Suppose the law in your community, applied to your circumstances, requires you to perform some action. Is there any moral obligation, at least in a decent society, to do what the law commands just in virtue of the fact that the law has commanded it? Christopher Wellman argues for a Yes answer; A. John Simmons for a No answer.

What set of institutional and political arrangements, in a modern society, is fair?

John Rawls argues that justice requires democratic equality--equal civil liberties and democratic citizenship rights for all, a strong equality of opportunity for positions of advantage, and the political economy to be set so that over time the worst off social group is as well off as possible.

Robert Nozick argues for a libertarian conception of justice. Individuals have rights not to be harmed in certain ways (force, theft, fraud) by others, and rights to live as they choose so long as they do not harm others in these certain ways. In Nozick's view, the egalitarian rights Rawls endorses are bogus, because they conflict with the basic rights to liberty.

Martha Nussbaum holds that we are all morally obligated to ensure that each and every human is enabled to lead a decent life, meaning that each has the capability or real freedom to function at a threshold "good enough" level in every one of the ways necessary for human flourishing. This doctrine is based on the capability approach to social justice developed by Amartya Sen. Nussbaum urges that this obligation holds that this obligation holds across the globe regardless

of national borders; in this sense her view is cosmopolitan. She interprets Rawls's theory of justice as exemplifying a social contract approach, which she rejects.

Ronald Dworkin holds that justice requires equal consideration and respect for all members of society and that these norms dictate a version of equality that is compatible with personal responsibility. Dworkin suggests that equality for responsible individuals demands compensation for unchosen bad luck but not for the outcomes of individual choice given fair initial conditions. Others say similar things. These views might be seen as trying to discover an acceptable compromise between Rawls and Nozick. Elizabeth Anderson and Samuel Scheffler object that these luck egalitarian views, as they have come to be called, are wrong-headed, partly in virtue of seriously misinterpreting the values of equality and responsibility.

Richard Epstein argues that something close to Nozick's minimal state is justified on broadly utilitarian grounds. The law should enforce a set of simple rules that he specifies, on the ground that the consequences for people would be superior to the consequences of any alternative set of rules that might instead have been enforced. David Schmidtz pursues a similar line. He thinks the concept of justice definitely rules out some policies and arrangements, but beyond these limits, there is room for choice among alternative conceptions, and we ought to choose and implement the conception of justice whose consequences would be best for people.

The goals of the course are to improve our skills at interpreting difficult texts and assessing their arguments, to understand a variety of approaches to the theory of justice, and to gain a more reflective understanding of our own political values.

COURSE TEXTS: John Rawls, *A Theory of Justice*; Robert Nozick, *Anarchy, State, and Utopia*; Ronald Dworkin: *Sovereign Virtue: The Theory and Practice of Equality*; Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*; Richard Epstein, *Simple Rules for a Complex World*; David Schmidtz, *The Elements of Justice*; and a few essays that will be available on the course web page.

COURSE REQUIREMENTS: Students are expected to do the required reading for each class before class meets and to participate actively in each class discussion. Each enrolled student must make at least one short class presentation (roughly ten minutes) during the semester highlighting, interpreting, and perhaps criticizing a significant argument or line of thought in that day's readings.

Your grade will be based on a midterm short essay responding to a topic on a list to be specified by the instructor, and a longer essay due at the end of the term (on the day when the course final would occur, if there were a course final). Both the short essay and the longer essay must engage some significant course theme and readings. I'll suggest topics for the long essay, but you may choose your own topic in consultation with me.

ATTENDANCE POLICY: I'll check attendance each week. You are expected to attend and participate in all classes. At the limit, if you miss as many as six classes, your grade will be reduced by one full grade (eg from A minus to B minus). I don't anticipate that this policy will come into play. Missing a class is being absent from a significant amount of a class meeting.

Schedule of Readings and Topics

Week 1. August 25-31.

MON: Introduction. (1) John Rawls's idea of justice as fairness and (2) an overview of utilitarianism. Reading: John Rawls, *A Theory of Justice*, chapter 1.

WED: Utilitarianism and global justice. Reading: Peter Singer, "Famine, Affluence, and Morality," *Philosophy & Public Affairs* 1972; also Richard Miller, "Beneficence, Duty, and Distance," *Philosophy & Public Affairs* 2003 (both available from course web page).

Week 2. September 1-7.

MON: NO CLASS. LABOR DAY HOLIDAY.

WED: Rawls's two principles of justice. Reading: Rawls, *A Theory of Justice*, chapter 2.

Week 3. September 8-14.

MON: Rawls's social contract argument; the original position. Reading: Rawls, *A Theory of Justice*, chapter 3.

WED: Rawls on liberty. Reading: Rawls, *A Theory of Justice*, chapter 4, plus section #82, "The Grounds for the Priority of Liberty."

Week 4. September 15-21.

MON: Rawls on economic institutions; justice and future generations; Rawls versus desert and perfectionism. Reading: Rawls, *A Theory of Justice*, chapter 5.

WED: A left-wing criticism of Rawls; egalitarianism and social norms. Reading: G. A. Cohen: "Where the Action Is: On the Site of Distributive Justice," *Philosophy & Public Affairs* 1997 (available from course web page).

Week 5. September 22-28

MON: A right-wing criticism of Rawls; introduction to Nozick and Lockean libertarianism.

Reading: Robert Nozick, *Anarchy, State, and Utopia*, chapter 7, part 2.

WED: Libertarianism property and distributive justice. Reading: Robert Nozick, *Anarchy, State, and Utopia*, chapter 7, part 1; also chapter 8.

Week 6. September 29-October 5.

MON: Natural moral rights and the minimal state. Reading: Robert Nozick, *Anarchy State, and Utopia*, chapters 1-3.

WED: Moral rights as side constraints and as goals; rights as absolute or nonabsolute. Reading: Robert Nozick, *Anarchy, State, and Utopia*, chapter 3, pp. 27-35; Amartya Sen, "Rights and Agency" (sections 1-4 only), *Philosophy and Public Affairs* 1982; also Judith Thomson, *The Realm of Rights*, chapter 6, "Tradeoffs" (the Sen and Thomson readings are available from the course web page).

Week 7. October 6-12.

MON: Rights of self-defense against aggression and just warfare. Reading: Judith Thomson, "Self-Defense," *Philosophy & Public Affairs* 1991; also Gertrude E. Anscombe, "War and Murder," reprinted in her *Collected Papers*, vol. 2 (the Thomson and Anscombe readings are available at the course web page).

WED: What incursions on one's person and property do Lockean libertarian rights protect? Reading: Robert Nozick, *Anarchy, State, and Utopia*, chapter 4.

Week 8. October 13-19.

MON: The capability approach to social justice; sufficientarianism ("all people must have 'enough' for a decent quality of life"). Reading: Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species membership*, chapter 1; also Amartya Sen, "Equality of Capabilities" (The Sen reading is available from the course web page).

WED: Capability and disability; Nussbaum's view. Reading: Martha Nussbaum, *Frontiers of Justice*, chapters 2 and 3.

Week 9. October 20-26.

MON: Cosmopolitanism and global justice. Reading: Martha Nussbaum, *Frontiers of Justice*, chapters 4 and 5. Recommended reading: an opposed view, Thomas Nagel, "The Problem of Global Justice," *Philosophy and Public Affairs* 2005 (the Nagel recommended reading is available at the course web page).

WED: Is there a duty to obey the law? The principle of fairness response and its critics. Reading: Robert Nozick, *Anarchy, State, and Utopia*, "The Principle of Fairness" (pp. 90-95 of chapter 5); A. John Simmons, "The Principle of Fair Play," reprinted in his *Moral Principles and Political Obligations*; also Christopher Wellman, "Liberalism, Samaritanism, and Political Legitimacy," *Philosophy & Public Affairs* 1996 (the Simmons and Wellman readings are available at the course web page).

Week 10. October 27-November 2.

MON: Is there a right to secede? Reading: Christopher Wellman, "A Defense of Secession and Political Self-Determination," *Philosophy & Public Affairs* 1995 ; also Allen Buchanan, "Theories of Secession" (both available at course web page).

WED: Dworkin versus equality of welfare. Reading: Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality*, chapter 1.

Week 11. November 3-9.

MON: Equality of resources; the envy test, option luck and brute luck; the equal auction and hypothetical insurance markets. Reading: Ronald Dworkin, *Sovereign Virtue*, chapter 2.

Recommended reading: same book, chapter 3.

WED: Justice and human good. Reading: Ronald Dworkin, *Sovereign Virtue*, chapter 6.

Week 12. November 10-16.

MON: Policy implications of Dworkin's theory of justice. Reading: Ronald Dworkin, *Sovereign Virtue*, chapters 8 and 9.

WED: Criticism of Dworkin and "luck egalitarianism." Reading: Elizabeth Anderson, "What Is the Point of Equality?", *Ethics* 1999; also Samuel Scheffler, "Choice, Circumstance, and the Value of Equality," *Philosophy, Economics, and Politics* 2005 (both available at course web page).

Week 13. November 17-23.

MON: A broadly utilitarian defense of the nearly minimal state. Reading: Richard Epstein, *Simple Rules for a Complex World*, part II: The Simple Rules, pp. 53-148. Further recommended reading: Richard Epstein, "The Utilitarian Foundations of Natural Law," *Harvard Journal of Law and Public Policy* 1989 (this essay is available at the course web page). Also recommended: Epstein, *Simple Rules for a Complex World*, Part I, Cutting through Complexity.

WED: Epstein applied to policy issues. Reading: Richard Epstein, *Simple Rules for a Complex World*, Part III, The Rules in Action, chapters 8 ("Contracting for Labor"), 9, ("Employment Discrimination and Comparable Worth"), and 12 ("The Contemporary Product Liability Scene").

Week 14. November 24-30.

MON: Conclusion of Epstein discussion. Reading: Richard Epstein, *Simple Rules for a Complex World*, "Conclusion: The Challenges to Simple Rules."

WED: NO CLASS. THANKSGIVING HOLIDAY.

Week 15. December 1-7.

MON: Reading: David Schmidtz, *The Elements of Justice*

WED: Reading: David Schmidtz, *The Elements of Justice*