

## Legal Studies 107: Theories of Justice Spring 2015

Lectures: Tuesdays & Thursdays, 11:00-12:30, 160 Kroeber Hall  
Instructor: Prof. Sarah Song (ssong@law.berkeley.edu)  
Office hours: Fridays 1-3 or by appointment

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### **Course description:**

It is commonly said that justice requires giving people their due but what are people due and in virtue of what? Is justice about maximizing happiness and minimizing harm? Is it about protecting individual liberty? What about equality? What kind of equality? Are liberty and equality opposing political values? In a just society, how would educational opportunities, income and wealth, and political power be distributed? In this course, we will pursue these questions by examining four leading theories in Western political thought – utilitarianism, libertarianism, egalitarian liberalism, and Marxism. To assess the strengths and weaknesses of these theories, we will discuss their implications for a range of controversial issues, including racial and gender justice, the legal regulation of sex, labor market regulations, immigration, affirmative action, and same-sex marriage.

### **Course books and reader:**

The required course books are available for purchase at the Cal Bookstore. If you decide to purchase them online, please try to get the following editions:

Immanuel Kant, *Grounding for the Metaphysics of Morals* (Hackett, 1993).  
John Stuart Mill, *Utilitarianism*, ed. George Sher (Hackett, 2002).  
John Stuart Mill, *On Liberty*, ed. Elizabeth Rapaport (Hackett, 1978).  
Robert Nozick, *Anarchy, State, and Utopia* (Basic Books, [1974] 2013 2nd ed.).  
John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Belknap Press, 2001).

A few copies of each book will also be on reserve at Moffit Library. All other readings are in the Course Reader, which is available for purchase at Copy Central. Other than the first week's readings, electronic copies of the readings will not be provided, so please purchase the Course Reader. You should also purchase a notebook to take notes by hand in lecture and section.

### **Course requirements and grading:**

Your course grade will be based on five components:

Paper #1 (4-5 pages)		
20%	Due Thursday, February 19	
Paper #2 (5-6 pages)	30%	Due Thursday, April 2
Final Exam	30%	Thursday, May 14, 8-11 AM
Attendance & participation in discussion section	20%	

You must attend class and complete *all* major assignments (two papers and the final exam) in order to pass the course.

**DSP accommodations:**

If you need special accommodations for the final exam or any other aspect of the course, please contact the Disabled Students' Program (DSP) if you haven't already and also let your GSI and me know. We will work with the DSP to make the necessary accommodations. The DSP office has already recruited a note-taker for our class.

**Attendance and participation:**

Your attendance is required at lectures and section. We will take attendance in lectures by asking you to sign your signature on a sign-in sheet for your section, which will be collected by your GSI. In lectures, Prof. Song will provide a presentation of the main ideas and arguments from the readings. Lectures will also include time for your questions. In the weekly GSI-led section, you will have the opportunity to discuss the readings in greater depth. You are expected to come prepared to participate in class discussion. If you have to miss a lecture or section, please notify your GSI in advance of your absence and provide your reason for having to miss class. Unexcused absences will count against your grade.

**Reading:**

You should plan to complete the readings listed on the syllabus before the lecture they will be discussed. You will get more out of lecture if you do the reading in advance. Before you start reading, look over the Study Questions and try to answer them as you do the reading. Some of the texts are difficult and abstract; they will require slow and careful reading, often re-reading. Please bring the assigned reading with you to lectures and sections.

**Papers:**

Paper topics will be distributed two weeks in advance of the due date. Your GSIs and I will discuss the paper topics with you when we distribute them. Your GSIs will conduct a Writing Workshop during our regularly scheduled lecture time on Feb 10. The first paper should be 4-5 double-spaced pages and the second paper should be 5-6 double-spaced pages. The paper format should be as follows: 1-inch margins (top, bottom, left, & right) and 12-point *Times New Roman* font. If you have further questions about the papers, please speak with your GSI. For additional help with writing, you can visit the Student Learning Center, which offers workshops and tutoring.

**Policy on late papers:**

If you expect that you will need additional time to write your paper, you must ask your GSI at least one week in advance of the due date. If your paper is late and you have not received an extension, the final grade of your paper will be reduced by one letter grade for every day your paper is late. If you have what you believe to be a valid excuse for a late paper (e.g. illness), you must provide a doctor's note to your GSI.

**Plagiarism:**

If you are caught plagiarizing, you will receive an F for the assignment and the matter will be referred to the Office of Student Conduct for disciplinary action. Remember that the aim of this class is to deepen your understanding of justice and develop your critical thinking and writing skills. Your GSIs and I are committed to supporting your pursuit of these goals. Plagiarism is not only wrong; it also robs you of the opportunity to improve your own critical thinking and writing skills.

In case you have any doubts about what plagiarism is: plagiarism is the presentation of another's words and ideas as your own without attributing the proper source. Plagiarism includes buying or obtaining papers from others and presenting it as your own work. Plagiarism also includes copying material from the Internet, books, articles, and any other material without citing the source. Any material taken word-for-word from another source must be placed in quotation marks and properly cited. You can use ideas and information from other authors without directly quoting from them (i.e. by paraphrasing), but you must acknowledge them in your footnotes or parenthetical documentation.

**Class comportment:**

1. Be punctual: Lectures and sections will begin promptly. For lectures, you should plan to be in your seats and ready for class by 11:10. Class goes until 12:30. Please do not leave early. Comings and goings are disruptive in big classes, where concentration is already a challenge. If you must leave early, please inform me or your GSI at the beginning of class and sit near the exit.

2. No electronic devices in class: To minimize distractions, all electronic devices are prohibited in lecture and section. This includes laptops, tablets, phones, and the like. I know that writing by hand has become difficult for some, but many are bothered by keyboard tapping. There is also the inevitable temptation to surf the web. As with other temptations subversive of our aims, it is best to remove them. So, before I begin lecture and before your GSI begins section, turn off your devices. I ask that you take notes the old-fashioned way, with pen and paper. Think of class time as an opportunity to be offline and to think uninterrupted!

To assist you in your note-taking, I will provide a lecture outline for most lectures; I will bring hard copies to lecture. I will also use Powerpoint slides for most lectures and will post these on bCourses. I will not provide electronic copies of the lecture outlines, so please do not ask me or your GSI for a copy of the outline. If you have to miss a lecture, it will be your responsibility to get a copy of the lecture outline from one of your classmates.

If you need to use a laptop for reasons stemming from a disability, please speak with me right away. The Disabled Students' Program (DSP) has already recruited a note-taker and I have given him permission to use a laptop to take notes for students whose request for accommodations have been approved by the DSP.

3. Eating and drinking in class: Please try not to eat during lecture; it is distracting. Liquids are fine.

4. Communicating with instructors: I am available during office hours, after class, and by appointment. Your GSI will provide you with contact parameters for reaching her/him.

## **SCHEDULE OF LECTURES AND READING ASSIGNMENTS**

\* Please bring the assigned text with you to lecture and section.

### Wk 1: Jan 20 (Tu). Introduction: What is justice & why should we study it?

(1) Ursula Le Guin, “The Ones Who Walk Away from Omelas.”

Study Questions: (1) What comes to mind when you hear the word “justice”? (2) Is justice about producing good consequences for the greatest number of people, or is there a constraint against doing or permitting harm that it is always wrong to violate? (3) Ursula Le Guin’s story asks whether it is ever right to sacrifice one person (or a few people) for the good of the majority. What do you think of those who remain in Omelas and those who leave? If you were in Omelas, what would you do?

## **I. UTILITARIANISM**

### Wk 1: Jan 22 (Th). Bentham’s utilitarianism and cannibalism on the high seas

Reading: (1) Jeremy Bentham, *Introduction to the Principles of Morals & Legislation*, chs. 1, 4, 13, 17 (section 1). (2) *R. v. Dudley & Stephens* (1884).

Study Questions: (1) What is Bentham’s “principle of utility” or “greatest happiness principle”? (2) Bentham says that pleasure is the only thing that is good in itself. Is he right? What about knowledge? Or beauty? Or achieving the aims you set for yourself? (3) How could Bentham make a utilitarian case against slavery or against punishing the innocent? Consider three cases: (i) the slave population is small; (ii) the slaves are members of a socially outcast group; (iii) the slaves are paid little, do backbreaking work, and are very productive. (4) In Bentham’s view, should a community enforce its public morals through legal sanctions? Why or why not? (5) The case *R. v. Dudley & Stephens* asks whether it is ever justifiable to sacrifice one person so that a greater number may survive. Do you think the legal ruling was just? What might Bentham say about the case?

### Wk 2: Jan 27 (Tu). Mill’s utilitarianism: The quality, not simply quantity, of pleasures matter

Reading: John Stuart Mill, *Utilitarianism*, chs. 1-2, 5.

Study Questions: (1) What does it mean to say that the quality of a pleasure is “higher”? How does Mill distinguish between higher and lower quality pleasures? (2) Is Mill right about the kinds of pleasures that those competent to judge would prefer? Who is “competent” to judge the quality of pleasures and the goodness of lives? (3) Does Mill’s distinction between higher and lower quality pleasures reflect an objectionable kind of elitism or an undue emphasis on intellectual pleasures? (4) Mill famously said “it is better to be a human being dissatisfied than a pig satisfied, better to be Socrates dissatisfied than a fool satisfied” (p. 10). What does this mean? Do you agree? (4) In ch. 5 Mill surveys some common views about what justice is. What view of justice does Mill endorse?

Wk 2: Jan 29 (Th). The legal enforcement of morality: The case of anti-sodomy laws

Reading: *Lawrence v. Texas* (2003), excerpts of the Opinion of the Court (also known as the “Majority Opinion”) and Justice Scalia’s dissent.

Study Questions: (1) Does the fact that sodomy violates the community’s morals (assuming that it does) provide a legitimate reason for criminalizing it? (2) If the majority of people in a society find a practice morally offensive and their views define the community’s sense of morals, should the majority’s views prevail? Why or why not? (3) Utilitarians, including Bentham and Mill, have explicitly condemned the legal enforcement of morals, but can utilitarian principles really provide a case against the legal enforcement of morals? (4) Is there an argument for opposing the legal enforcement of morals that strikes you as more convincing than the utilitarian argument?

Wk 3: Feb 3 (Tu). Mill’s defense of liberty: Reconciling liberty and utility

Reading: John Stuart Mill, *On Liberty*, chs. 1-2.

Study Questions: (1) Mill says that *On Liberty* defends “one very simple principle,” also known as the Harm Principle (p. 9). What does this principle say? (2) Consider Mill’s utilitarian argument for the Harm Principle. How is the general welfare improved by tolerating religious, philosophical, and moral dissent? What are the costs of such toleration? Why does he think the benefits of tolerating dissent outweigh the costs? (3) Mill provides an ardent defense of freedom of speech. Why is freedom of speech valuable? When, if ever, can freedom of speech be restricted in Mill’s view?

Wk 3: Feb 5 (Th). Limits on individual freedom

Reading: Mill, *On Liberty*, chs. 3 & 5.

Study Questions: (1) In ch. 3, Mill discusses the freedom to *act* upon one’s beliefs and opinions. When it comes to *self-regarding* acts, Mill argues that one should be permitted great freedom in carrying one’s beliefs into practice. Why? (Consider Mill’s discussion of individuality.) (2) Do you think that conduct should only be regulated if it is *harmful* to others? What about regulating conduct out of a concern for the person’s own welfare (e.g. use of seat belts), or because it is repulsive (e.g. bestiality), or because it is offensive to others (e.g. public nudity), or because some judge it to be morally wrong (e.g. suicide, physician-assisted suicide)? (3) In ch. 5, Mill discusses drug usage and drug sales, gambling, prostitution, the decision to procreate, and education. Does he think any of these activities should be subject to government regulation? Why or why not? (4) What might Mill say about legal restrictions on racist hate speech? Restrictions on pornography?

Wk 4: Feb 10 (Tu). Special session: GSI-led Writing Workshop to be held during lecture

Your GSIs will let you know what you need to do to prepare for this workshop.

## II. FROM CONSEQUENTIALISM TO DEONTOLOGICAL MORAL THEORY & INALIENABLE RIGHTS

Wk 4: Feb 12 (Th). Deontological moral theory as an alternative to consequentialism/utilitarianism

Reading: Immanuel Kant, *Grounding for the Metaphysics of Morals*, preface & sections 1-3.

Also read “On a Supposed Right to Lie because of Philanthropic Concerns.” (all in the Hackett ed.)

Study Questions: (1) Why, according to Kant, is utilitarianism wrong? Why is it a mistake to base morality on any actual interest, desire, or end, including the aim of maximizing happiness? What is the proper basis of morality? (2) In Kant’s view, morality must take the form of the categorical imperative. What is the categorical imperative? (3) Kant rejects the idea that freedom is the ability to pursue our actual desires without the interference of others. He understands freedom as autonomy. What is Kant’s view of freedom/liberty and how is it different from Mill’s view? (4) According to Kant, is it ever morally permissible to lie?

Wk 5: Feb 17. No class

Wk 5: Feb 19 (Th). Locke on the origins of the right to private property

Reading: John Locke, *Second Treatise on Government*, ch. 5.

Study Questions: (1) What is the relationship between human labor and private property? (2) How do you come to have a right of ownership in something? (3) Do you agree with Locke that most of the value of an appropriated thing (e.g. a cultivated piece of land) derives from human labor? (4) What moral constraints does Locke place on the acquisition of private property?

**\* Paper #1 due: Thursday, Feb 19** (Your GSI will let you know how/where to submit your paper.)

### III. LIBERTARIANISM

#### Wk 6: Feb 24 (Tu). Possessive libertarianism I: Defending a minimal state

Reading: Robert Nozick, *Anarchy, State, & Utopia*, Preface (pp. ix-xiv); all of ch. 2; pp. 26-35, 48-53 of ch. 3; and pp. 113-119 of ch. 5.

Study Questions: (1) What is a “minimal state”? Does Nozick provide a plausible story of how the state could emerge in a morally permissible way without violating anyone’s rights? (2) Nozick thinks about individual rights as “side constraints” (p. 30). What is this idea? (3) Nozick criticizes utilitarianism for failing to respect that each person is a “separate person.” What does he mean by this? (4) Does Nozick satisfactorily answer the problem of the individual anarchist or “independent” who initially refuses to accept the protective services of the state?

#### Wk 6: Feb 26 (Th). Possessive libertarianism II: Nozick’s historical “entitlement theory” of justice

Reading: Nozick, *Anarchy, State, & Utopia*, pp. 149-64 and pp. 167-82 of ch. 7.

Study Questions: (1) What three principles make up Nozick’s theory of justice? (2) What is the difference between “historical” and “end-state” principles of justice? Which type of theory is Nozick’s? (3) Playing off Marx, Nozick sums up his theory with the following maxim: “From each as they choose, to each as they are chosen.” In prizing individual choice and liberty above all else, does Nozick’s theory fail to account for anything important? (4) Nozick famously said, “Taxation of earnings from labor is on a par with forced labor” (p. 169). Do you agree? Do you see any morally significant differences between taxing someone’s earnings and forcing someone to labor?

#### Wk 7: March 3 (Tu). Liberty and labor market regulation

Reading: (1) *Lochner v. New York* (1905), Opinion of the Court & Justice Holmes’s dissent; (2) *West Coast Hotel v. Parrish* (1937), Opinion of the Court.

Study Questions: (1) Why does the *Lochner* Court think it is illegitimate for the state to regulate labor markets in order to redress inequality of bargaining power between employers and employees? What effects might such inequality of bargaining power have for wages and working conditions? (2) Is it paternalistic to try to correct for inequalities of bargaining power? Do such regulations make workers “wards of the state”? Is it also paternalistic to protect a person from physical assault? (3) Are minimum wage laws or workplace health and safety regulations objectionably paternalistic? What, if anything, is wrong with paternalism? (4) What might Nozick say about *Lochner*?

#### IV. EGALITARIAN LIBERALISM

##### Wk 7: March 5 (Th). Introducing Rawls's theory of justice

Reading: John Rawls, *Justice as Fairness*, Part I, pp. 1-24, 26-38. [36 pages total]

Study Questions: (1) What is the role of political philosophy? (2) Rawls lays out several fundamental ideas: the idea of a society as a fair system of social cooperation, the idea of citizens as free and equal persons, and the idea of a well-ordered society. Be sure to spend some time to understand these ideas. (3) Rawls limits the scope of his inquiry in several ways: to the "basic structure" (not comprehensive moral doctrines), to "ideal theory" (not non-ideal theory), and to relations among citizens of one society (not relations among "peoples"). What do you make of these limits? (4) What is the "original position"? (5) What does it mean for someone to reach "wide reflective equilibrium" in thinking about justice?

##### Wk 8: March 10 (Tu). Rawl's principles of justice and the idea of moral desert

Reading: (1) Rawls, *Justice as Fairness*, Part II, pp. 39-66, 72-79;  
(2) Nozick, *Anarchy, State Utopia*, 213-231. [52 pages total]

Study Questions: (1) Rawls says his theory of justice as fairness is a "political conception" of justice, a form of "political liberalism," which focuses on the political relationship as distinct from other relationships, such as familial and personal relationships. How does Rawls define the "political"? (2) What are Rawls's two principles of justice? Which liberties are included in Rawls's list of basic liberties? What does it mean for the first principle to have priority? (3) What is "the problem of distributive justice" that Rawls seeks to address? (4) Who are "the least advantaged"? (5) Rawls says the idea of moral desert/deservingness cannot be incorporated into a political conception of justice. Why not? One implication is that, on his theory of justice, "we do not deserve (in the sense of moral desert) our place in the distribution of native endowments [natural abilities]" and that we should think of the distribution of endowments as "a common asset" (74-75). If justice is not about rewarding moral desert, what about people who work hard and play by the rules? Do they have no moral claim on the rewards they receive for their efforts? What does Nozick say about this?

##### Wk 8: March 12 (Th). The argument from the original position: Why choose justice as fairness?

Reading: Rawls, *Justice as Fairness*, Part III, pp. 80-92, 94-107, 111-134 [48 pages total]

Study Questions: (1) Rawls says the original position (OP) is a device or model of representation. What does the OP model or represent? (2) What are the "circumstances of justice"? What role does this idea play in Rawls's theory? (3) Rawls says that for agreement on the principles of justice to be effective, there must also be agreement on "guidelines for public inquiry" and "the criteria as to what kind of information and knowledge is relevant in discussing political questions" (89). He argues we would agree to the idea of public reason. Do you agree? (4) Rawls argues it is rational for parties in the OP to be guided by the maximin rule (97). What is the maximin rule and why does it apply to the OP? (5) Rawls argues that the parties in the "original position" would choose his two principles of justice over the principle of average utility. Study Rawls's argument for his principles of justice on pp. 94-107 and 111-134. If you accept the constraints imposed by the OP, do you agree that



parties in the OP would choose Rawls's principles over the principle of average utility?

(6) What, if anything, justifies the original position?

Wk 9: March 17 (Tu). Justice and gender

Reading: (1) Susan Moller Okin, *Justice, Gender, and the Family*, ch. 5;

(2) Rawls, *Justice as Fairness*, 162-168.

Study Questions: (1) Many feminist theorists have criticized liberalism for relying on a dichotomy between the public and the private. What is this dichotomy and why is it a problem? How is Rawls "trapped" into the public-private dichotomy in Okin's view? (2) Rather than rejecting Rawls's theory, Okin seeks to revise it toward developing a liberal theory of gender justice. What revisions does she call for? Do her revisions answer the objections she raises against Rawls? (3) Okin concludes that the "disappearance of gender is a prerequisite for the complete development of a nonsexist, fully human theory of justice" (105). Do you agree? What sorts of policies might get us there? (4) How does Rawls respond to Okin's criticism?

For optional additional reading, see Susan Okin, "Justice and Gender: An Unfinished Debate," *Fordham Law Review* (2004) and Marion Smiley, "Democratic Citizenship v. Patriarchy: A Feminist Perspective on Rawls," *Fordham Law Review* (2004) (both articles can be found here: <http://fordhamlawreview.org/issues/47>).

Wk 9: March 19 (Th). Justice and race

Reading: (1) Charles W. Mills, *The Racial Contract* (1997), 62-81; (2) Tommie Shelby, "Race and Social Justice: Rawlsian Considerations," *Fordham Law Review* 72 (2004), 1697-1714.

For optional additional reading, see Glenn C. Loury, "Ferguson Won't Change Anything. What Will?" *Boston Review* (Jan 2015):

<http://bostonreview.net/forum/glenn-c-loury-ferguson-wont-change-anything-what-will>); Tommie Shelby, "Justice, Deviance, and the Dark Ghetto," *Philosophy & Public Affairs*, vol. 35, no. 2 (2007).

March 24 & 26. No lecture – spring break

Wk 10: March 31 (Tu). A more pluralistic approach to justice: Walzer's "complex equality"

Reading: Michael Walzer, *Spheres of Justice*, ch. 1 "Complex Equality" and ch. 3 "Security & Welfare."

Study Questions: (1) Walzer proposes a pluralistic theory of justice: "different social goods ought to be distributed for different reasons, in accordance with different procedures, and by different agents" (p. 6). What do you think of this pluralistic approach? (2) Walzer says that the distribution of any social good is "just or unjust relative to the social meanings of the goods at stake" (p. 9). Are there any problems with this kind of relativism? (3) What makes Walzer's conception of equality "complex"? (4) Walzer outlines three different principles for distributing social goods: free exchange, desert, and need. He also discusses the principle of equality. Think of examples of different goods that should be distributed according to each of these principles. (5) What sort of

communal provision of basic goods (food, clothing, shelter) is appropriate for a society like the U.S.? What about health care – how should it be distributed?

Wk 10: Apr 2 (Th). Membership and immigration

Reading: (1) Walzer, *Spheres of Justice*, ch. 2 “Membership”;  
(2) Joseph Carens, “Aliens and Citizens: The Case for Open Borders.”

Study Questions: (1) Walzer proposes we think about citizenship (or membership in a political community) as a “primary good that we distribute to one another” (p. 31). What do we gain by thinking of membership in this way? (2) Walzer defends a political community’s right to control immigration by appealing to the idea of cultural distinctiveness. What’s his argument? (3) Walzer argues that a state’s right to control immigration is not unlimited. What are the moral limits on how a democratic state treats noncitizens *within* its territory? What about noncitizens *outside* the territory? Can democratic states admit or exclude whomever they want, according to Walzer? (4) Carens argues that utilitarianism, libertarianism, and egalitarian liberalism all support a policy of open borders. Do you agree? (5) Do you think there are any reasons of justice to restrict immigration?

\* **Paper #2 due: Thursday, April 2** (Your GSI will let you know how/where to submit your paper.)

**V. A MORE RADICAL EGALITARIANISM: MARXISM**

Wk 11: Apr 7 (Tu). Marx’s critique of liberalism (Guest lecture)

Reading: Marx, *On the Jewish Question* (1843), pp. 26-52 of *The Marx-Engels Reader* (MER).

(1) The question that Marx explicitly addresses is how the emancipation of Jews could be achieved; more generally, the text provides a window into Marx’s critique of liberalism. Liberals of his day argued for the separation of religion and politics by removing any civic exclusions based on religion. By contrast, Bruno Bauer, a philosopher who was a student of Hegel’s, argued that the emancipation of Jews required that they renounce their religion. What does Marx think is wrong with the liberal approach and Bauer’s approach? (2) What does Marx mean by “emancipation”? What is the difference between “political emancipation” and “human emancipation”? (3) In the second part of the essay, Marx explores the nature of Jewishness. He thinks that the content of religious life provides clues to the social problems in the wider society that give rise to religion. What problems of civil society does he think are reflected in Judaism?

Wk 11: Apr 9 (Th). The principles of communism

Reading: (1) Marx, “The Power of Money in Bourgeois Society,” *Economic & Philosophic Manuscripts of 1844*, pp. 101-105 of MER; (2) Marx & Engels, *Manifesto of the Communist Party*, pp. 469-491 of MER.

Study Questions: (1) Marx says money appears as an “overturning power both against the individual and against the bonds of society” (105). What does he mean by this? (2) Marx and Engels link their theory of history with revolutionary politics. What is the prime driver of history? (3) Mull over this passage: “The development of Modern Industry... cuts from under its feet the very foundation on which the bourgeoisie produces and appropriates products. What the bourgeoisie, therefore, produces, above all, is its own grave-diggers. Its fall and the victory of the proletariat are equally

inevitable” (483). How does capitalism produce its own “grave-diggers”? (4) What is “the distinguishing feature” of communism? (5) What do they mean when they say, “The working men have no country” (p. 488)? (6) How do Marx and Engels critique the bourgeois family? How would things be different for women and children under communism?

Wk 12: Apr 14 (Tu). Marxism meets feminism: MacKinnon’s dominance feminism

Reading: (1) Catherine MacKinnon, “The Problem of Marxism and Feminism,” pp. 3-12 of *Toward a Feminist Theory of the State*; (2) MacKinnon, “Difference and Dominance: On Sex Discrimination,” pp. 32-45 of *Feminism Unmodified*; (3) MacKinnon, “Sex and Violence: A Perspective,” pp. 85-92 of *Feminism Unmodified*.

Study Questions: (1) What similarities and what conflicts does MacKinnon see between Marxism and feminism? (2) MacKinnon describes the mainstream approach to sex equality in the U.S. as including only two paths for women – be the same as men or be different from men – which she labels “equality as sameness/difference.” What’s wrong with this approach in her view? (3) MacKinnon advances another approach that she calls the “dominance” approach. How is this approach different from “equality as sameness/difference”? What difference would these two approaches make for how we respond to particular issues, such as workplace accommodations for pregnancy, pornography, prostitution, and sexual harassment?

## VI. ADDITIONAL TOPICS

Wk 12: Apr 16 (Th). Global labor justice

Reading: Iris Marion Young, “Responsibility and Global Labor Justice” (2004).

Study Questions: (1) Young argues that people in “relatively free and affluent countries” such as the U.S. “have responsibilities to try to improve working conditions and wages of workers in far-off parts of the world” (p. 365). She bases her argument on the ideal of “political responsibility.” What does this ideal require of us? How is the “political responsibility” model different from the “liability model”? (2) How might Young respond to someone who argues, “I haven’t harmed the citizens of poor countries nor did I cause their poverty, so I don’t have any responsibility to assist them. I can assist them as a matter of charity if I want to, but I’m not, as a matter of duty, required to do so”?

Wk 13: Apr 21 (Tu). Screening of documentary Film: *China Blue*

Please make sure you have completed the Iris Young reading before you watch this film.

Wk 13: Apr 23 (Th). Affirmative Action

Reading: (1) *Grutter v. Bollinger*, 539 U.S. 306 (2003), Opinion of the Court & Justice Thomas’s dissent; (2) Susan Sturm & Lani Guinier, “The Future of Affirmative Action,” *Who’s Qualified* (2001), 3-34; (3) Claude M. Steele, “Understanding the Performance Gap,” in *Who’s Qualified*, 60-7.

Study Questions: (1) Are all uses of racial classifications on a par and equally objectionable? Is it just as objectionable to have an affirmative action program that benefits a historically disadvantaged minority group as to have a program that benefits the majority group? (2) What is the value of diversity in the college classroom? Why does the majority of the Court in *Grutter* think it is so

important? (3) Do affirmative action programs undertaken to promote racial diversity in universities rest on objectionable stereotypes or reinforce racial divisions, as Justice Thomas suggests? (4) Sturm and Guinier challenge the idea that performance on standardized tests is a good measure of merit. What's their critique of standard narratives about affirmative action? What approach do they propose instead? (5) What are the implications of Steele's research on stereotype threat for the debate on affirmative action programs?

Wk 14: Apr 28 (Tu). Same-sex Marriage

Reading:

- (1) *Loving v. Virginia*, 388 U.S. 1 (1967), excerpt;
- (2) re-read *Lawrence v. Texas*, 539 U.S. 558 (2003);
- (3) *Perry v. Schwarzenegger* (2010);
- (4) Prop 8 (1 page);
- (5) Katherine Franke, "Longing for *Loving*" (2008);
- (6) Michael Kinsley, "Abolish Marriage" (2003).

Study Questions: (1) On what legal grounds was Virginia's legal ban on interracial marriage struck down? (2) On what legal grounds was Texas's ban on same-sex sodomy struck down? What values did the Court seek to protect in *Lawrence*? (3) What reasons does Judge Walker give for striking down Proposition 8 in *Perry*? (4) Is *Perry* more like *Loving* or *Lawrence*? While Franke supports the movement for marriage equality, she is critical of the normatively superior status that married people enjoy. What is behind Franke's concern? (5) Recall that utilitarian philosophers like Bentham and Mill opposed the legal enforcement of morality, which suggests that they might oppose legal bans on sodomy or other sexual behavior. What might they say about same-sex marriage, which is not a "private" behavior but a public institution created and supported by the state? (6) Kinsley proposes to sidestep the controversy altogether by "abolishing marriage." What do you think of his proposal?

Wk 14: Apr 30 (Th). Concluding lecture and course evaluations

**\* The final exam is scheduled for Thursday, May 14, 8:00 AM to 11:00 AM. \***