

Theories of Justice

Legal Studies 107WI

Fall 2020. 4 units + 1 independent study

Prof. Christopher Kutz
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Office hours: Thursdays, 2-4pm.

<https://berkeley.zoom.us/j/98246947637?pwd=TEx1S0w5VlFUUXBhMi94dVNTDBSQT09>

Meeting ID: 982 4694 7637

Passcode: 930301

Lecture meetings: MWF 3-4pm, Zoom. (Lecture will start at 3:10.)

<https://berkeley.zoom.us/j/92694498188?pwd=b2NaZUFnd1EyampUQm1zTUtBMGNMQT09>

Meeting ID: 926 9449 8188

Passcode: 389050

Graduate Student Instructor:

Anna Zaret, annazaret@berkeley.edu

Note: this syllabus is identical to the one for LS107, except that it also has weekly writing assignments. In general, please refer to the main LS107 bCourses site for general readings and materials; and to this site and syllabus for the section-specific assignments.

Required Texts:

The following are the principal books we will study; other materials will be on bCourses. I have included links to electronic editions where possible, as well as some scanned copies on bCourses (in light of the closure of libraries). You will probably need to use the UCB Library proxy service for some of these editions. Instructions are available [here](#). I strongly encourage purchase of hard copies especially of John Rawls, *Theory of Justice*, which is a large book much easier to read on paper.

John Stuart Mill, *On Liberty and Other Essays* (Oxford 1991). E-book of *On Liberty* is [here](#). *Utilitarianism* is [here](#).

Immanuel Kant, *Groundwork of the Metaphysics of Morals* (Cambridge 1998). E-book is [here](#).

Robert Nozick, *Anarchy, State, and Utopia* (Basic Books 1977). (Also available on bCourses.)

John Rawls, *A Theory of Justice* (rev. ed. 1999). Hereafter ‘*TJ.*’ (Also available on bCourses.)

John Rawls, *Political Liberalism* (Columbia 1996). Hereafter ‘*PL.*’ (Also available on bCourses).

Charles Mills, *The Racial Contract* (Cornell University Press, 1997). E-book is [here](#).

Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge 2d. ed. 1998). E-book [here](#).

Secondary reading

The [Stanford Encyclopedia of Philosophy](#) has a number of excellent articles, on, e.g., John Stuart Mill, John Rawls, Libertarianism, Communitarianism, Robert Nozick’s Political Philosophy. It may be useful to look at these articles both before and after doing the assigned reading – but they are not a substitute for that reading!

In addition, the following texts may be helpful:

Jean Hampton. *Political Philosophy* (Westview Press, 1997).

Will Kymlicka. *Contemporary Political Philosophy* (Oxford, 1990)

John Rawls, *Justice as Fairness* (Harvard, 2001).

Course Description

This is a course in political philosophy, focussing on the particular tradition of liberal political theory. Liberal political theories emphasize, to varying degrees, the protection of individual freedom as against social demands, the maintenance of social and economic equality, and the neutrality of the state in conditions of cultural and religious pluralism. By studying a range of modern authors, we will attempt to understand the importance of these goals and the possibility of their joint fulfillment. Special attention will be paid to the work of John Rawls, to the problem of moral and political disagreement, and the relation between “ideal” thinking about justice and thinking about justice in conditions of racial and gender hierarchies and historical forms of oppression.

Learning objectives:

The lecture component of this course has three principal goals. The first is for you to learn that fundamental claims about politics, and political justice, can be the object of sustained rational argument, and not merely opinion-voicing. The second is to learn how to read long and complex arguments, to understand their strengths, and to identify their argumentative vulnerabilities. Third, we hope that you will come to understand, critically, your own political commitments.

The writing-intensive section of the course has the additional objective to develop, through weekly writing and presentation assignments, advanced skills in analysis and oral

argument, specifically in relation to questions of justice. We also hope to help you develop skills in the fundamentally iterative process of producing excellent written academic work.

Enrollment into the Writing Intensive section will be by instructor approval. Interested students should submit a short paragraph describing their goals in enrolling in the writing-intensive section, and a brief description of other writing-based courses they have taken.

Attendance and classroom policies:

You are required to attend lectures as well as discussion sections, and are expected to participate actively in both. You are permitted three unexcused absences from lecture, and one unexcused absence from section. Observance of religious holidays will also, of course, be honored. You are responsible, however, for any material covered in lecture or section, whether or not your absence is excused.

Those with conflicting extra-curricular commitments (e.g., performance, athletics) will need to make specific arrangements, per the campus guidelines. In particular, you need to notify me as early as possible, and ideally in the first few weeks of class, with a proposed solution to any conflict with deadlines. The solution may involve an earlier deadline or test time.

I use an active, conversational, lecture style, in which I aim to be very responsive to your questions as they arise in lecture, and in which I also hope to engage you, as individuals and as groups, in that discussion. This means that you are going to need to pay attention not only to what I say in lecture, but also to your classmates. This course works best when it is a collective conversation.

Your attendance at lecture is expected, as is your prior completion of the reading assignments. (Although some of the reading assignments do not involve many pages, the readings are often very condensed, and will require re-reading for comprehension.) Attendance and participation at weekly section meetings are required, and will be recorded. You may be asked to complete brief written assignments for specific section meetings. Section discussions will often cover assigned course materials not discussed in lecture.

In general, you should try to do all the readings for the week in advance of the week's first lecture, unless otherwise indicated in the syllabus. (I may adjust the syllabus over the semester as I gain an appreciation of the proper pace for work.)

Some Zoom/online specific requests and policies:

- I strongly prefer that you have your video cameras on during lecture. A sea of black screens is demoralizing both for me and for other students. (You are welcome of course to use a blank or other artificial background for your screen.) Please also try to minimize distracting lighting (glare, etc.), backgrounds, and movement. And please dress as you would for in-person class.

- We will make frequent use of breakout rooms, in which you will be grouped with 3-5 others, to discuss points raised in lecture. Please remain fully engaged in discussion during this breakout time, rather than treating it as a break. (We will also take breaks.)
- When I teach in person, I prohibit laptops because I know too well how distracting they are during lecture. Obviously I can't do that this semester, but I implore you to resist distracting yourself with browsing, chatting, messaging, etc.
- Because we will be a large class with many Zoom screens, please signal your willingness to speak with a chat message to Everyone (or to me or your GSI), and I will call on you.

DSP Accommodation:

If you have specific needs due to documented disabilities, we will make every effort to accommodate these needs, in collaboration with the Disabled Student's Office. For information on University policies regarding students with disabilities, and federal and state laws affecting people with disabilities, contact: <http://access.berkeley.edu>. Please convey your DSP accommodation letter to your GSI early in the semester so that the teaching staff can make all appropriate arrangements.

Requirements and Grading

Your grade will be based on the following components: 30% will be a class participation component, based on weekly assignments in your sections, both written and oral; 20% will come from a final exam, and 50% comes from two longer papers (25% each), developed in part in your weekly assignments. Those two papers are due **Sept. 25th** and **Nov. 6th**. You will also write the assigned editorial, brought to section on **Dec. 2nd**, but it will be peer-graded. You are also required to do a in-class, peer-shadow-graded midterm, on **Oct. 26th**. The peer-given grade is for your information only. But we will assign a grade to your peer-grading, to be incorporated into the classroom participation component. Finally, you will be assigned weekly writing assignments ("WWA") that are due at the beginning of section each week. The instructions for the WWAs are posted in the course outline below.

The class participation component of the grade will be assessed as follows: each weekly written assignment and formal oral participation effort in section will be given a grade of Satisfactory, Great, and Do More! (check, plus, and minus), on the basis of effort and insight shown. Those individual grades will be combined into a single class participation grade, with an S average converted into a 3.33/B+, with departures upwards and downwards.

Please note carefully: you cannot pass the course without completing all written assignments, or if you have missed more than 30% of your section meetings. No papers will be accepted late without **prior** permission from the instructor.

University policies on plagiarism will be strictly enforced. Plagiarism consists in offering work as your own for a grade without acknowledging its source. Self-plagiarism, or offering your own work submitted for grading in another course, is also prohibited. This is the University policy:

*All written work submitted for a course, except for acknowledged quotations, must be expressed in the student's own words. It must also be constructed upon a plan of the student's own devising. Work copied without acknowledgement from a book, from another student's paper, from the internet, or from any other source is plagiarized. Plagiarism can range from wholesale copying of passages from another's work to using the views, opinions, and insights of another without acknowledgement, to paraphrasing another person's original phrases without acknowledgement. The submission of such work will, under University rules, render the offending **student** subject to an F grade for the work in question or for the entire course, at the discretion of the instructor, and will also make the student liable for referral to the SJA.*

Students who for any reason need special arrangements for exams are responsible for notifying me or the GSIs at the beginning of the semester. Students who notify us immediately prior to or after an exam cannot be accommodated.

Your participation in lecture is strongly encouraged. As you read the assignments, think about what questions the authors were attempting to answer. What answers do the authors suggest, and what arguments presented to support these answers? Ask yourself whether you agree with the answers: why or why not?

Course outline and readings:

(Note: the schedule of readings will vary with our actual progress.)

Introductory classes: Aug. 26th and Aug. 28th:

Weds: Discussion of syllabus, and the “Liberal Tradition.” Read “Is Economic Inequality Really a Problem?” (bCourses).

Fri.: Freedom of speech and constrained conversations. Read J.S. Mill, *On Liberty*, Ch. 1, “The Harpers Letter” and “The Harpers Letter and Cancel Culture” (bCourses).

Week of Aug. 31st: The liberal tradition and utilitarian social theory as a foundation.

Mon. & Weds.: Mill, *Utilitarianism*, Chs. 1-2, 5.

Fri.: Mill; *On Liberty*, Ch. 2.

Week of Sept. 7th: The importance of individual liberty and its compatibility with utility.

Mon: Labor Day, No class.

Weds.: Mill, *On Liberty*, Ch. 3.

Fri.: Mill, *On Liberty*, Chs. 4-5.

WWA: Write a 200-400 word response paper that makes an argument about (a) restricting an existing social or political liberty or (b) maintaining or expanding that same right. Possible examples of existing social or political liberties include access to drugs or alcohol, guns, clothing, speech. Post your response paper on the class discussion board before class and write a short response (under 200 words) to another student post.

Week of Sept. 14th: Liberalism as a protection of autonomy (the Kantian tradition)

Mon: Reading: Kant, *Groundwork*: C. Korsgaard “Introduction,” pp. xvii-xxv; Kant., pp. 36-50 [4:418-440] (on Bcourses)

Weds. & Fri.: Nozick, *ASU*, pp. 10-12, 26-35, 42-45, 48-51, 149-64, 174-82.

WWA: Write 300-500 word response paper exploring what will be your core argument for Paper 1 (due next week - prompts will have been distributed). You may also include questions or concerns about the argument you are thinking of making. Post your response paper on the class discussion board before class. You will also have a separate conference with your GSI.

Week of Sept. 21st: Libertarian Justice and the Duty of Reparations.

Mon.: Continue with Nozick, *ASU*, pp. 286-94

Weds. & Fri.: Coates, “The Case for Reparations”; Darby, “Reparations and Racial Equality.” Further reading: David Lyons, “Reparations for Slavery and Jim Crow.” bCourses.

Paper #1 due 5pm Friday, Sept. 25th.

*WWA: Post a Google Doc link to a **complete** draft of Paper 1 on the class discussion board for peer review.*

When you submit your final draft, include a memorandum explaining what changes you have made in relation to comments by instructors and peers, and on your own accord. Make sure to explain what you are proud of in the paper, what you learned, and what you think requires further work.

Week of Sept. 28th: Justice, “Original Positions,” and Whiteness as background: Social contracts and racial contracts

Mon.: Rawls, *Theory of Justice (TJ)*, Sections (**not pages**) 1-4.

Weds.: Continue with Rawls: *TJ*, Sections (not pages) 5,7,9, 20-25.

Fri.: Charles Mills, *The Racial Contract*, 1-40, 66-78. (Bcourses).

WWA: Write a 200-400 word response paper about the right method for thinking about justice. Should a theory of justice develop from abstract principles, or from concrete experience? Post your response paper on the class discussion board and write a short response (under 200 words) to another student post.

Week of Oct. 5th: Race, Utility and the Difference Principle

Mon.: Mills, *Racial Contract*, continued.

Weds. & Fri. *TJ*, Sections 11-17, 24-29, 31.

WWA: Write a 200-400 word response paper about the relation between economic (distributive) justice and one other form of justice (e.g., social/identity-based claims, or historical claims). Post your response paper on the class discussion board and write a short response (under 200 words) to another student post.

Week of Oct. 12th: Challenges to the Original Position, and Natural duties

Mon. & Weds.: Nozick, *ASU* pp. 183-231.

Fri.: Rawls, *TJ*, sections 18-19, 51-53, 58-59.

WWA: Prepare for in-class debate (topics and groups to be decided in section).

Week of Oct. 19th: Social conflict, tolerance, and the liberties of the moderns.

Mon.: Tommie Shelby, “Justice, Deviance, and the Dark Ghetto.” bCourses.

Weds. Rawls, *TJ*, Secs. 33-36, 39-40.

Fri.: Rawls, *TJ*, 63-65, 82-83, 85.

WWA: In-class debate. Post on the class discussion board an outline of your argument that you will be presenting in the in-class debate.

Week of Oct. 26th: Catch-up/Review/Midterm

Mon.: Catchup/Review

Weds.: Review

Friday: **Midterm exam “in class.”**

WWA: Write 300-500 words exploring what will be your core argument for Paper 2 (due in two weeks - prompts will have been distributed). Post your response on the class discussion board. You will also have a separate conference with your GSI.

Week of Nov. 2nd: Deeper foundations for the Theory of Justice: psychological and social. But is it enough?

Mon.: Rawls, *TJ* Secs. 18-19, 51-53.

Weds.: *TJ* Secs. 69-71, 74-77, 80-81.

Fri: Sandel, *LLJ*, 1-65.

Paper #2 due in class by 5pm Friday, Nov. 6th.

*WWA: Post a Google Doc link to a **complete** draft of Paper 2 on the class discussion board, for peer review.*

When you submit your final draft, include a memorandum explaining what changes you have made in relation to comments by instructors and peers, and on your own accord. Make sure to explain what you are proud of in the paper, what you learned, and what you think requires further work.

Week of Nov. 9th: The communitarian challenge.

Mon.: Sandel, *LLJ*, 66-103.

Weds.: Veterans Day, No Class

Fri.: Sandel, pp. 133-53.

Week of Nov. 16th: Gender, choice, democracy. [Diversity and Liberalism]

Mon: Martha Nussbaum, “Review of Okin, *Justice, Gender and the Family*” bCourses.

Weds. & Fri. Elizabeth Anderson, “What is the point of equality?”

WWA: Choose a contemporary example (incident or situation) that reflects a debate about justice. Write a response paper of 200-400 words explaining how the theories we

have discussed in class illuminate the debate. Post your response on the class discussion board, and write a short response (under 200 words) to another student post.

Week of Nov. 23rd: Justice as Political, not Metaphysical

Monday: Rawls, *PL*, Lectures I (esp. secs. 5-8) and II (esp. secs. 3-6).

Weds. & Friday: Happy Thanksgiving!

WWA: Write a draft of the Editorial assignment, due next week, and check in with Anna.

Week of Nov. 30th: Pluralism and the foundation of liberalism.

Mon.: *PL*, Lecture IV

Weds.: *PL* Lecture VI (esp. secs. 1-4,6-8).

Fri.: Catch up

*WWA: Post a **complete** draft of the Editorial assignment as a Google Doc link on the discussion board, for peer review and discussion. There will be no recorded grade.*

Editorial/Paper #3, due Friday, 5pm.

Week of Dec. 7th: RRR week

Final Exam, Tuesday, Dec. 15th, 7-10pm.