

**PHI 401: Justice and the Law**  
**Fall 2004**

**INSTRUCTOR:**

Prof. Ishani Maitra, Department of Philosophy

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Office hours: Tuesdays and Thursdays 2:30–3:30p.m., and by appointment

**CLASS MEETINGS:**

Tuesdays and Thursdays 4:00–5:20p.m. in 203 Newhouse I.

**COURSE DESCRIPTION:**

We believe that a state is morally justified, at least sometimes, in restricting the rights and liberties of its citizens. But which rights, and which liberties, is the state justified in restricting? And under what circumstances is the state justified in imposing those restrictions? This seminar will attempt to answer these questions. In the first part of the seminar, we will look at some theoretical approaches to these questions, from works by John Stuart Mill, Joel Feinberg, Ronald Dworkin, and others. In the rest of the course, we will use what we've learned in the first section of the seminar to think about some topics that are of particular interest in the U.S. context, including freedom of expression, freedom of religion, sexual privacy, affirmative action, and others.

**COURSE REQUIREMENTS:**

1. Read the required pieces closely.

2. Regularly attend class.

Attendance in class is required, and essential for doing well in this course. If you have a good reason for missing class, e-mail me *before class* to let me know what the reason is. If you miss a class, you are responsible for getting notes and handouts from that class.

3. Participate in class.

There will be plenty of opportunity during class time to ask questions, make comments, and respond to what I and your classmates say. Everyone is expected to come to class prepared to participate. I will attempt to make sure that the class atmosphere is such that everyone feels comfortable speaking up; if you feel that that is not the case, I strongly encourage you to come talk to me.

4. Write two papers during the term.

Each paper should be 3-4 pages in length. Due dates for both papers are noted in the course outline below; please plan your semester accordingly. At least one week prior to each due date, a list of possible paper topics will be handed out. You will be required to write on one of the topics on that list.

Papers must be typed or word-processed. Please keep a copy of each paper that you submit. Late work will be accepted only under exceptional circumstances, and only when an extension is granted *in advance* of the due date.

5. Present a case to the class.  
 Court cases are indicated on the reading outline *in italics*. Groups of 1-2 will be responsible for presenting each class to the class. A sign-up sheet for presentations will be circulated in the second week of classes.
  
6. Write a term paper.  
 Preparation of the term paper will proceed in two stages. The first stage is a presentation of your term paper topic, and an outline of the paper itself, to the class. These presentations will take place in the final two weeks of the term. Note that your presentation grade depends both on the quality of your own presentation, and your participation in others' presentations.  
 The second stage is the writing of the term paper itself. The paper should be 10-12 pages long, and is due the week after the end of classes.

## GRADING

Class attendance and participation:	10%
Two papers (20% each):	40%
Case presentation:	10%
Term paper presentation:	10%
Term paper:	30%

## ACADEMIC HONESTY

The following is Syracuse University's policy on academic honesty:

Syracuse University students shall exhibit honesty in all academic endeavors. Cheating in any form is not tolerated, nor is assisting another person to cheat. The submission of any work by a student is taken as a guarantee that the thoughts and expressions in it are the student's own except when properly credited to another. Violations of this principle include: giving or receiving aid in an exam or where otherwise prohibited, fraud, plagiarism, the falsification or forgery of any record, or any other deceptive act in connection with academic work. Plagiarism is the representation of another's words, ideas, programs, formulae, opinions, or other products of work as one's own either overtly or by failing to attribute them to their true source. (Section 1.0, University Rules and Regulations.)

Anyone in violation of this policy will *at least* receive a failing grade on the relevant assignment. If you have any questions about what constitutes academic dishonesty, you should look at <http://www-hl.syr.edu/cas-pages/PromAcademicHonesty.htm>, and come talk to me.

## REQUIRED READINGS:

1. Course Reader, available at Electronic Publishing Center, 001 Sims Hall. The Reader will be available *Thursday, September 2*.
  
2. Additional readings may be put on Course Reserve at Bird Library.

## READINGS:

[All readings, **except those in bold**, are included in the Course Reader. In the course of the semester, readings may be added to or deleted from this list. All changes will be announced in class. Please be sure to keep track of changes.]

### I. INTRODUCTION

No reading

### II. RIGHTS

- Joel Feinberg, "The Nature and Value of Rights"
- Ronald Dworkin, "Hard Cases"
- F. M. Kamm, "Conflicts of Rights"

### III. LIBERTY

- John Stuart Mill, "On Liberty"
- Joel Feinberg, "Offensive Nuisances"
- Patrick Devlin, "The Enforcement of Morals"
- Gerald Dworkin, "Paternalism"

### IV. THE RIGHT TO FREE SPEECH

- John Stuart Mill, "On Liberty" (2<sup>nd</sup> excerpt)
- Frederick Schauer, "Free Speech: A Philosophical Enquiry"
- Joel Feinberg, "Limits to the Free Expression of Opinion"
- *Doe v. University of Michigan*
- Richard Delgado and Jean Stefancic, "Words that Wound"
- Charles R. Lawrence III, "If He Hollers Let Him Go: Regulating Racist Speech on Campus"
- Henry Louis Gates, Jr., "War of Words: Critical Race Theory and the First Amendment"

### V. THE RIGHT TO PRIVACY

- *Griswold v. Connecticut*
- David A.J. Richards, "Interpretation and Historiography"
- Robert Bork, "Neutral Principles and Some First Amendment Problems"
- *Roe v. Wade*
- John Noonan, "The Root and Branch of *Roe v. Wade*"
- Catharine MacKinnon, "Reflections on Sex Equality Under Law"

## VI. THE RIGHT TO RELIGIOUS FREEDOM

- Mario Cuomo, "Religious Belief and Public Morality: A Catholic Governor's Perspective"
- John Garvey, "The Pope's Submarine"
- *Employment Division, Oregon Department of Human Resources v. Smith*
- Stephen L. Carter, "The Accommodation of Religion"

## VII. JUSTICE AND EQUALITY

- Peter Westen, "The Empty Idea of Equality"
- Anthony D'Amato, "Is Equality a Totally Empty Idea?"
- Martha Minow, "The Dilemma of Difference"

## VIII. INEQUALITY AND GENDER

- *Regina v. Morgan*
- Susan Estrich, "Real Rape"
- *State v. Rusk*
- Kim Lane Scheppelle, "The Reasonable Woman"

## IX. INEQUALITY AND RACE

- Thomas E. Hill, Jr., "The Message of Affirmative Action"
- *Regents of University of California v. Bakke*
- Carl Cohen, "Why Racial Preference is Illegal and Immoral"
- Syracuse University *Amicus Curiae* Brief in *Barbara Grutter v. Lee Bollinger, et al.*, and *Jennifer Gratz and Patrick Hamacher v. Lee Bollinger, et al.*
- **Derrick Bell, "Learning from Living: The University of Michigan Affirmative Action Cases"** [available at <http://jurist.law.pitt.edu/forum/symposium-aa/bell.php>]

COURSE OUTLINE:

Tuesday, August 31 Thursday, September 2	<i>Introduction to the Course</i> <i>The Structure of Rights</i>
Tuesday, September 7 Thursday, September 9	
Tuesday, September 14 Thursday, September 16	<i>The Right to Liberty</i>
Tuesday, September 21 Thursday, September 23	
Tuesday, September 28 Thursday, September 30	<i>The Right to Free Speech</i> 1 <sup>ST</sup> SHORT PAPER DUE
Tuesday, October 5 Thursday, October 7	
Tuesday, October 12 Thursday, October 14	<i>The Right to Privacy</i>
Tuesday, October 19 Thursday, October 21	
Tuesday, October 26 Thursday, October 28	<i>The Right to Religious Freedom</i> 2 <sup>ND</sup> SHORT PAPER DUE
Tuesday, November 2 Thursday, November 4	<i>Justice and Equality</i>
Tuesday, November 9 Thursday, November 11	<i>Inequality and Gender</i>
Tuesday, November 16 Thursday, November 18	<i>Inequality and Race</i>
Tuesday, November 23 Thursday, November 25	NO CLASS (Thanksgiving Break)
Tuesday, November 30 Thursday, December 2	<i>Term Paper Presentations</i>
Tuesday, December 7 Thursday, December 9	Last Day of Classes
Friday, December 17	TERM PAPER DUE (by 5:00p.m.)