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### PHL 319E.80: Law and Discrimination

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# PHL 319 – Law and Discrimination

## Instructor Information

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[To schedule an appointment](#)

## Course Description and Learning Goals:

The main goal of the course is to familiarize students with philosophical analyses of the concept(s) of discrimination and provide them with an understanding of how these analyses apply to various discriminatory practices in US law. The main questions guiding the course are:

- What is discrimination and under which conditions is it morally wrong and/or politically unjust?
- Which are some of the wrongful instances of discrimination within the past/current US legal institutions and practices?
- What should our way forward be?

To that effect, the course includes a rigorous presentation of the basic concepts and forms of reasoning that define relevant traditions in ethics and political theory, including utilitarianism, deontological theory, social contract theory, and communitarianism. In addition, students will be exposed to current philosophical analyses of the concept(s) of discrimination. Finally, the course will guide students toward a better understanding of how these theoretical traditions and conceptual analyses can be applied, so that they can make sense of various kinds of discriminatory practices in US legal institutions. The specific focus of the course may vary but always includes philosophical analyses of discriminatory legal practices related to racism and/or sexism and/or ableism and/or speciesism. The course thus aims to foster an appreciation of diverse perspectives and of the struggle of certain groups to gain equal positions in US legal institutions and practices. It also seeks to ground students in the ideas, institutions, and practices of US democracy and help them understand the rights and responsibilities of engaged citizenship in our current political and legal systems. Finally, an important learning goal for this course is to improve students' reading, writing, analytical thinking, and communication skills.

Upon completion of this course, students are expected to be able to:

- A. demonstrate informed and reasoned philosophical understanding of the problem of discrimination (racism, sexism, ableism, and/or speciesism) in US legal institutions and practices;
- B. correctly apply the basic concepts and forms of reasoning from the traditions of utilitarianism, deontological theory, social contract theory, and communitarianism to the issue of discrimination as it arises in US legal institutions and practices;
- C. analyze and critically evaluate the basic concepts and forms of reasoning from these traditions and analyses as they apply to the issue of discriminatory practices in US law;
- D. demonstrate an understanding of some of the diverse ways humans have structured their lives within political and legal institutions either as perpetrators or targets of discriminatory practices in Western legal systems;
- E. interpret legal institutions and practices with reference to a diversity of perspectives related to race, and/or gender, and/or ability and/or species;
- F. articulate some of the conceptual foundations at the core of historical and/or contemporary struggles within legal systems in Western democracy, as it pertains to issues of diversity, equity, and justice;

- G. identify, reconstruct, and critically assess arguments as well as to learn to develop and articulate well-justified, well-informed, and circumspect views on the issue of discrimination in the law.
- H. analyze and evaluate what philosophical analyses of discrimination in the law imply regarding the significance and complexities of engaged citizenship, including a recognition of the complexities of inter-cultural communication and collaborative endeavors, and of how they relate this to the complex challenges of the 21<sup>st</sup> century.

## **Tentative Schedule**

### **Prelude: (Week 1)**

- Syllabus
- How to read philosophy
- How to read a legal opinion

### **Part 1: Theoretical Framework: Ethics and Political Theory**

#### *Unit 1: Ethical Framework*

- Section 1: Utilitarianism
  - Matthews, G. and Hendricks, C. (ed), Introduction to Philosophy – Ethics, Chap. 5
  - Honors/Optional for non-honors: Mill, J.S. Utilitarianism.
- Section 2: Deontological theory
  - Matthews, G. and Hendricks, C. (ed), Introduction to Philosophy – Ethics, Chap. 6
  - Honors/Optional for non-honors: Kant, E. Groundwork for the Metaphysics of Morals.

#### *Unit 2: Political Theory:*

- Section 1: Social Contract
  - Matthews, G. and Hendricks, C. (ed), Introduction to Philosophy – Ethics, Chap. 4
  - Honors/Optional for non-honors: Locke, J. Second Treatise on Government
- Section 2: Justice as Fairness
  - Sandel, M. Justice. Chap. 6
  - Honors/Optional for non-honors: Rawls, A Theory of Justice
- Section 2: Communitarianism
  - Sandel, M. Justice. Chap. 10
  - Sandel, M., Selected excerpts

### **EXAM 1 + PAPER 1 – September 29th**

### **Part 2: Theoretical Frameworks: Nature and Ethics of Discrimination**

#### *Unit 3: Concepts of Discrimination*

- Section 1: Direct Discrimination
  - Lippert-Rasmussen (2018), The Routledge Handbook of the Ethics of Discrimination, Chap. 1
- Section 2: Indirect Discrimination
  - Lippert-Rasmussen (2018), The Routledge Handbook of the Ethics of Discrimination, Chap. 2
- Section 3: Statistical Discrimination
  - Lippert-Rasmussen (2018), The Routledge Handbook of the Ethics of Discrimination, Chap. 3
- Section 4: Discrimination and Intersectionality.
  - Lippert-Rasmussen (2018), The Routledge Handbook of the Ethics of Discrimination, Chap. 5

#### *Unit 4: The Wrongness of Discrimination*

- Section 1: Discrimination and Disrespect
  - Lippert-Rasmussen (2018), The Routledge Handbook of the Ethics of Discrimination, Chap.6
- Section 2: Discrimination and Social Meaning
  - Lippert-Rasmussen (2018), The Routledge Handbook of the Ethics of Discrimination, Chap. 7
- Section 3: Discrimination and Equality of Opportunity
  - Lippert-Rasmussen (2018), The Routledge Handbook of the Ethics of Discrimination, Chap. 11

## **EXAM 2 + PAPER 2 – November 5<sup>th</sup>.**

NO CLASS ON 11/10-12: Work on CEGP

### **Part 3: Applications: US Law and Discrimination**

Lecture – November 15<sup>th</sup> – Race in US Legal History TBA?

#### *Unit 5: African Americans and the Criminal Justice System*

- Section 1: Slavery, Jim Crow, Mass Incarceration, Black-Lives Matter
  - DOJ Ferguson, Report (excerpt)
  - Alexander, *The New Jim Crow* (2010) (excerpt)
  - Coates, *The Case for Reparations*, in *We Were Eight Years in Power* (2017) (excerpt)
  - Jewel, *Neurorhetoric, Race, and the Law: Toxic Neural Pathways and Healing Alternatives*, 76 MARYLAND L. REV. 663 (2017)
- Section 2: Continued
  - Richardson and Goff, *Self-Defense and the Suspicion Heuristic* (2012) (excerpt)
  - Fradella, *Morrow, White, Terry and SQF Viewed through the Lens of the Suspicion Heuristic* (2016)
  - *Floyd v. City of New York* (2013) (excerpt)

Presentations Nov. 22<sup>nd</sup>

#### *Unit 6: Indian Americans and US Federal Law*

- Section 1: Race, Racism, and Federal Indian Law: Roots and Developments
  - *U.S. v. Rogers*, 45, U.S. 567 (1846)
  - *U.S. v. Kagama*, 118 U.S. 375 (1886)
  - *Elk v. Wilkins*, 112, U.S. 94 (1884)
  - *U.S. v. Sandoval*, 231 U.S. 28 (1913)
  - *Morton v. Mancari*, 417 U.S. 535 (1974)
  - *U.S. v. Antelope*, 430 U.S. 641 (1977)
- Section 2: Race, Racism, and Federal Indian Law: Modern Challenges
  - *Rice v. Cayetano*, 528 U.S. 495 (2000)
  - *Adoptive Couple v. Baby Girl*, 133 S.Ct 2552 (2013)
  - *U.S. v. Bryant*, 136 S.Ct. 1954 (2016)
  - Treuer, *For Indian Tribes, Blood Shouldn't be Everything*, NY Times

Presentations Dec 3<sup>rd</sup>

#### *Unit 8: Immigration Law*

- Section 1: Muslim Ban, Mexican Wall, and “Illegal Aliens”. Selections from:
  - Boswell, *Racism and US Immigration* (2003)
  - Akram and Johnson, *Race, Civil Rights, and Immigration Law After 9-11* (2002)
  - *State of Hawaii v Trump* (9<sup>th</sup> Cir. 2017)
- Section 2: Racial Profiling and the Fight for Immigrant Rights. Selections from:
  - Montana Code Annotated § 44-2-117
  - Immigration & Nationality Act § 287(g)
  - Johnson, *How Racial Profiling Became Law* (2010)
  - *Rios-Diaz v. Butler* (2015) (judgment)
  - Montana Highway Patrol GR-9 (2015)
  - Bermes, *Montana Supreme Court denies petition* (2017)
  - *Francis v. DeMarco* (2018)

## **EXAM 3 + PAPER 3 – December 10<sup>th</sup>**

FINAL PRESENTATIONS: Friday, December 17<sup>th</sup>, 8:00-10:00.

## Pedagogical Strategies, Course Requirements, and Assessment

### Assessment

Your grade will be based on the following:

Criteria	Points
Attendance and participation	10 points
Exams	30 points (3 exams: 10 points each)
Response Papers	30 points (3 papers: 10 points each)
Project	30 points (2 presentations: 10 points each; final portfolio: 10 points, P2P assessment: 2 points extra credit.)

### Pedagogical Strategies:

Throughout the course, I will apply the lessons learned from current research on higher education learning, focusing on:

- Active learning (retrieval, informal and formative practice, integration);
- Meta-cognition (awareness of learning process, integration of knowledge);
- Backward design (from learning goals to learning opportunities/anticipated obstacles)
- Assignment transparency (see the Transparency In Learning and Teaching (TILT) project).

### Exams

You will have to take an exam every two or three units. The purpose of the exams is to assess your understanding of the material covered in class as well as your critical thinking skills. All exams will take place on Moodle and will consist in multiple choice questions. Questions will be formulated so as to check on your informed and reasoned understanding of, by contrast to superficial familiarity with, the material covered in class.

### Response Paper:

Every two or three units, you will be required to write 500-word (more or less 10%) a response paper. The purpose of the response papers is to assess your progress towards an understanding of how the theoretical and conceptual framework apply to real circumstances. The paper should have the following structure:

1. Summarize at least one view covered in the past two units;
2. Explain how this view is similar/different from the view you had on this particular issue before taking the class;
3. Summarize the argument behind that view, as well as some its strengths and weaknesses;
4. Show how this view can be applied in real life situations.

### Group Projects:

As the semester progresses, you will be required to work on a Civic Engagement Group Project.

#### Purpose:

The Civic Engagement Group Project is designed to assess whether you are making progress toward reaching Learning Goals A through K. There are also meant to help you engage with meta-cognition, i.e. to help you work on awareness and integration of the knowledge gained through the course. Particular emphasis will be put on Learning Goal H, i.e. on fostering your ability to analyze and evaluate what philosophical analyses of discrimination in the law imply regarding the significance and complexities of engaged citizenship, including a recognition of the complexities of inter-cultural communication and collaborative endeavors, and of how they relate this to the complex challenges of the 21st century

A key goal of the CEGP is to encourage you to reflect on and understand how the material covered in class are relevant when addressing some real-life legal issues: you should learn about some of the ways in which the theoretical frameworks we've studied relate to your own life and the lives of others as well as about some of the ways in which your own life and the lives of others raise questions about these theoretical frameworks.

Another key goal of the CEGP is to encourage you to take action as a citizen. For your CEGP, you should pick an issue you feel passionate about and plan to make a change in the lives of those in your community. How can you work on making the world a better place?

As a result of completing the CEGP, you should also have learned more about the topic you are addressing and be in a better position to have and defend your own views on this topic. You should also have honed your research skills as well as your ability to work in group setting.

**Tasks:**

The task is to write a policy proposal designed (by the group) to address a specific legal issue, of which you have developed a good practical and theoretical understanding through group research.

You will have to present to the class and eventually write on each of the five parts of the project detailed below. You will give a draft presentation on your project during either Week 13 or 14 of the semester. You will present your final presentation during finals week and submit a written version of your project on Moodle. You will get extra-credit if you create a visually appealing website for your project.

The tasks for each part of the project are described below. Make sure to answer the questions asked and follow the instructions to be given full credit:

**1. Part I: Introduction:**

- a. Identify a legal problem pertaining to issues of freedom, diversity, equity, or justice.
- b. Give some background or factual information to explain the importance of the problem you chose: why should we care about this problem and how solving it could make the world a better place?
- c. How is your project related to morality? What moral values do you hope your project will promote? How do they relate to democratic values? Why are these values important to *you*?

**2. Part II: Investigations:**

- a. Conduct research on the history of the problem: is this a problem that needs to be put in the context of some form of injustice at the systemic level? What does history teach us about the context in which this problem arises?
- b. Conduct factual research on what other people have tried to do about the problem you have chosen (or similar ones). What works? What did not work? How is your project different from previous attempts and how is it building upon the lessons of the past?
- c. Conduct real research: include good statistics, citations, and quality sources.

**3. Part III: Theoretical Frameworks:**

- a. Relate the problem to at least one of the theoretical frameworks we have studied in class. Describe the main characteristics and claims of the theoretical framework(s) you have chosen.
- b. Explain how these frameworks relate to the practical legal issue you are addressing: explain whether and how your project reflects the main characteristics and claims of the theoretical framework(s) you have chosen; explain how your project is informed by the theoretical framework(s) you have chosen.
- c. Explain how the practicalities of the issue inform the theoretical frameworks.

**4. Part IV: Policy Proposal**

- a. Identify the government official who has the most authority dealing with the legal problem you want to address
- b. Craft a policy proposal that would address that issue: be clear and specific about what exactly the policy proposal is about;
- c. Explain how the policy proposal will address (at least some aspects of) the legal issue you want to address.

**5. Part V: Hurdles and Challenges**

- a. Identify and describes the expected hurdles and challenges that such a policy proposal is likely to face.
- b. Be charitable: if you expect opposition from some of the public and public representatives, explain their point of view from their perspective.
- c. Identify some strategies that can help address the challenges you've identified and move the proposal forward.

**Criteria for Success:**

The group project will be graded for each student on the basis of:

- The quality of group presentations (2 presentations, 10 points each. Each of the (a), (b), (c) in the description above will be given 3 point + 1 point for the quality of oral communication);
- The quality of the final portfolio (10 points. The same rubric will be applied as during the presentations);
- Group Project Peer Evaluation (2 points extra-credit).

## Resources:

[Policy Proposal Tips by the Truman Scholarship Foundation](#)

[Some concrete examples of policy proposal for the Truman Scholarship](#)

[New York Law School helps to end license suspensions that affects communities and people of color](#)

[Prof. Jordan Gross on bail reform](#)

## Tokens

Life sometimes interferes with academics. When this happens, it become challenging for students to meet academic deadlines and students often experience tremendous anxiety. This course uses “tokens” to provide some flexibility around deadlines and to reward careful time management. Every student will start the semester with 10 tokens. During the semester, they may exchange their tokens for the following:

- One absence from class (3 tokens)
- 12h extension on an assignment (5 tokens)
- 24h extension on an assignment (10 tokens)

You may exchange left-over tokens for extra-credit: you will be given 0.5 extra credit points on your final grade for each token you saved, up to a maximum of 5 extra-credit points

## Paper Option: Philosophy majors

Please note that if you want this course to count as one of your upper-division core philosophy classes (Value Theory), you will need to write a research paper (instead of your Civic Engagement Group Project). Please contact me ASAP if you are pursuing that option. I will give you an explanation of the task and a rubric associated with the research paper upon request.

## Honors Section

Students in the Honors section will be help to higher standards throughout the semester:

1. Students in the Honors section will assigned extra reading materials that is optional for the rest of the class.
2. Students in the Honors section will be required to take a leadership role in class group work.
3. Students in the Honors section will be required to be ready to be cold-called in class about the material covered in the previous class session or about the reading material for the day.
4. Students in the Honors section will be required to take a leadership role in the group projects by organizing meeting, clearly distributing tasks, and making sure the final project comes together appropriately.

## University Resources

### Writing Center

Students from all levels can take advantage of the writing center (LA 144: drop in or by appointment). “The Writing Center exists to help all UM students improve their writing skills as they pursue their academic and professional goals. We provide free writing instruction through one-on-one tutoring, in-class workshops, and the Writing Assistant program.” (quoted from the Writing Center website). For more information, [go the website](#).

### Academic Misconduct

You are strictly held to the [University of Montana Student Conduct Code](#)

Unless collaborative work is specifically called for, work on assignments, quizzes, and exams is expected to be your own. If you cheat, your assignment will receive a zero. You may fail the class altogether depending on the circumstances. Also, I will report the case to the Dean.

I will be glad to answer questions you may have about how to document sources properly. Anytime you use a phrase or sentence that someone has used before you on the topic of interest, you must cite your source. Anytime you take an idea from someone, you must cite your source.

All exams are closed-notes and closed-books: you may not consult anything but your own mind in order to answer questions on the exam. You may not use cell-phones, or any electronic devices to aid you, nor fellow students, nor fellow students' answers on exams, etc.

### **Students with Disabilities**

If you are a student with a disability and wish to discuss reasonable accommodations for this course, it is your responsibility to contact me and discuss the specific modifications you wish to request. Please be advised I may request that you provide a letter from the [Office for Disability Equality](#) (ODE) verifying your right to reasonable modifications. If you have not yet contacted Disability Services, located in Lommasson Center 154, please do so in order to verify your disability and to coordinate your reasonable modifications.

### **Basic Needs Resources**

Any student who faces challenges securing their food or housing, and believes that this could affect their performance in this course, is urged to use/contact any or all of the following campuses resources:

- The UM food pantry is located at the West Atrium Desk on the first floor of the University Center.
- ASUM Renter Center: Students can schedule an appointment with Renter Center staff, in order to discuss their situation and receive support and assistance.
- TRiO Student Support Services: TRiO serves UM students who are low-income, first-generation college students, or have documented disabilities. TRiO services include a book loan program, scholarships and financial aid help, and academic advising, coaching, and tutoring.
- If you are comfortable, please come see me as well. I will do my best to help you.
- The Financial Aid office also offers short-term loans in cases of temporary hardships. Apply on Cyberbear.

### **COVID-19 Mitigation policies**

- Mask use is required within the classroom or laboratory.
- If you feel sick and/or are exhibiting COVID-19 symptoms, please don't come to class and contact the Curry Health Center at (406) 243-4330.
- If you are required to isolate or quarantine, you will receive support in the class to ensure continued academic progress.
- UM recommends students get the COVID-19 vaccine. Please direct your questions or concerns about vaccines to Curry Health Center.
- Where social distancing (maintaining consistent 6 feet between individuals) is not possible, specific seating arrangements will be used to support contact tracing efforts.
- Class attendance and seating will be recorded to support contact tracing efforts.
- Drinking liquids and eating food is discouraged within the classroom.