

**Law 215.5: Foundations of Political Philosophy: Equality and Citizenship
(Spring 2019)**

Tuesday 10-12:40

Selznick Seminar Room, 2240 Piedmont Ave

Instructor: Professor Sarah Song

Email: ssong@law.berkeley.edu

Office hours: Thursdays 2-3:30 or by appointment (422 North Addition)

Course Description

This course is a seminar in contemporary political philosophy. The aim is to explore some key political ideas and topics with attention to their implications for law. We will focus on the concepts of equality and citizenship.

Equality is widely held to be a fundamental value in liberal democratic societies but what is equality, equality of what, and equality for whom? Is equality about ensuring a fair distribution of goods or a certain kind of relationship or standing that people have to each other? How should we conceive of racial and gender equality? Is economic inequality objectionable in itself or only under certain circumstances such as when it gives some an unacceptable degree of power over others or undermines the fairness of basic social and political institutions? How should we think about equality across borders?

How should we conceive of citizenship - as a formal political and legal status, entitlement to a set of rights, active participation in self-governance, an identity, or something else entirely? Can we prioritize the interests of fellow citizens over the rest of humanity? Is equal citizenship compatible with group-differentiated rights, such as exemptions or accommodations for religious and cultural minority groups? What might postnational and cosmopolitan models of membership look like?

We will read texts by Bernard Williams, T.M. Scanlon, John Rawls, Michael Walzer, Ronald Dworkin, Elizabeth Anderson, Martha Nussbaum, Catharine MacKinnon, Kimberle Crenshaw, Linda Bosniak, Samuel Scheffler, David Miller, Judith Shklar, Rogers Smith, Will Kymlicka, and Yasmin Soysal. Students will be expected to engage in close readings of these texts, participate in seminar discussion, and write a final paper.

Prerequisites and Enrollment

This is a graduate seminar offered as part of JSP Program at Berkeley Law. The course presupposes no prior coursework in political theory or philosophy, but those unaccustomed to reading theoretical texts should allot sufficient time to complete the readings. Enrollment is open to JSP, JD, JSD, and LLM students as well as PhD students in the Political Science, Philosophy, and other departments. Students from other departments are required to obtain permission from Prof. Song and complete a form provided by the Law School Registrar.

Readings

Most of the readings will be made available on bCourse. Please purchase the following books from a vendor of your choice or borrow them from the campus library:

John Rawls, *A Theory of Justice* (1971, 2005, original ed – the cover photo has ripples on a pond)

Michael Walzer, *Spheres of Justice* (1983)

For every week, I have listed some additional reading, which is optional and intended for those who want to delve deeper into the themes of that week.

Requirements

- **Reading and participation:** Complete each week's reading and come to class prepared to discuss it. Some of the texts are quite dense and will require time and energy to digest. Please remember quality is just as, if not more, important than quantity when it comes to participation.
- **Attention and engagement:** Not only do I want you to attend class but I also want your attention and engagement in every class. To minimize distractions and maximize engagement, the use of laptops is discouraged. You may bring tablets (iPad, Kindle) to class in order to refer to the readings, or if you have access to a printer, please print out the readings. I encourage you to purchase a notebook to take notes in class. I will sometimes provide handouts of particularly dense readings. If you absolutely must use a laptop, please speak with Prof. Song.
- **Reflection papers (no more than 500 words each):** You are required to write two reflection papers. Choose one week from the first half of the course on "Equality" and one week from the second half of the course on "Citizenship." You might develop a question or a series of questions that emerge from your reading, provide observations about what you think is important or surprising, and/or identify points of connection or disagreement with the readings for that week or from previous weeks. The aim is to provide a carefully thought-out reaction to the readings. Post your paper on bCourse by 5pm Monday. Everyone is encouraged to read one another's reflection papers before class. I will ask students who've written reflection papers for a particular week to lead off class discussion.
- **Seminar paper:** 15-20 page paper (double-spaced, 12-pt *Times New Roman* font, 1-inch margins) due on **May 6**. You must submit a short paper sketch by **April 16**. Your paper should consider some question(s) and author(s) we discuss in the course, but it need not be limited to those questions and authors. I will provide a list of possible topics in the middle of the semester. You are welcome to develop your own topic. All of the papers should aim to demonstrate clear thinking, close attention to argument, reflection on distinctions between concepts and cases, and illustration of theoretical points through real-world examples and/or imaginative hypotheticals.

Schedule and Readings

Jan 8. Introductions, course overview, and kicking off discussion of the idea of equality
Bernard Williams, "The Idea of Equality" (1962), *In the Beginning was the Deed*, 97-114
T.M. Scanlon, "When Does Equality Matter?" (2004)

Further (optional) reading:

S. Gosepath, "Equality," *Stanford Encyclopedia of Philosophy* (2011), section 2.1-2.4
Harry Frankfurt, "Equality as a Moral ideal," *Ethics* 98 (1987) (excerpt)

EQUALITY

Jan 15. Rawls' liberal egalitarian theory of justice
John Rawls, *A Theory of Justice* (1999), sections 1-5, 11-14, 22, 24-26, 29

Further reading:

Normal Daniels ed., *Reading Rawls* (1975)
Samuel Freeman ed., *The Cambridge Companion to Rawls* (2003)

Jan 22. A pluralistic approach to equality: Walzer's complex equality

Michael Walzer, *Spheres of Justice*, chs. 1-4, 12

Further reading:

Ronald Dworkin, "To Each His Own" (review of Walzer), *New York Review of Books* (1983)

David Miller and Michael Walzer, *Pluralism, Justice, and Equality* (1995)

Jan 29. Equality and individual responsibility

Ronald Dworkin, "What is Equality? Part 2: Equality of Resources," *Philosophy and Public Affairs* 10 (1981): 283-345

Elizabeth Anderson, "What is the Point of Equality?" *Ethics* 109 (1999): 287-337

Further reading:

Richard Arneson, "Luck Egalitarianism Interpreted and Defended," *Philosophical Topics* 32 (2004)

Samuel Scheffler, "What Is Egalitarianism?" *Philosophy and Public Affairs* 31 (2003)

Feb 5. Race and equality

Kwame Anthony Appiah, "Race, Culture, Identity: Misunderstood Connections," in *Color Conscious: The Political Morality of Race* (1996), 30-105 (you can skip 42-54, 56-64)

Charles Mills, "Racial Equality," in *The Equal Society* (2015), 43-71

Further reading:

Ta-Nehisi Coates, "The Case for Reparations," *The Atlantic* (2014)

Melvin Rogers, "Keeping the Faith" (review of Ta-Nehisi Coates), *Boston Review* (2017)

Charles Mills, *The Racial Contract* (1997)

Tommie Shelby, *We Who Are Dark: The Philosophical Foundations of Black Solidarity* (2005)

Feb 12. Gender and equality

Carol Gilligan, "Moral Orientation and Moral Development" (1987), excerpt

Martha Nussbaum, "Human Capabilities, Female Human Beings" (1995), excerpt

Catharine MacKinnon, "Difference and Dominance: On Sex Discrimination," *Feminism Unmodified* (1987), 32-45

Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review*, 43:6 (1991), excerpt

Further reading:

Carole Pateman, *The Sexual Contract* (1988)

Feb 19. Equality across borders: Does a commitment to equality require open borders?

Joseph Carens, "Aliens and Citizens: The Case for Open Borders," *Review of Politics* 49 (1987): 251-73

Sarah Song, "Does Justice Require Open Borders?" in *Immigration and Democracy* (2018), 77-92

Further reading:

Michael Blake, "Immigration," *A Companion to Applied Ethics* (2005)

Sarah Song, "Political Theories of Migration," *Annual Review of Political Science* (2018)

Christopher Heath Wellman, "Immigration and Freedom of Association," *Ethics*, 119/1 (2008)

CITIZENSHIP

Feb 26. What is citizenship? Why does it matter?

J.G.A. Pocock, "The Ideal of Citizenship since Classical Times" (1992), 29-52

Linda Bosniak, "Defining Citizenship," in *The Citizen and the Alien* (2006), 17-36

Linda Kerber, "The Meanings of Citizenship," *Journal of American History* 84 (1997): 833-54

Further reading:

Will Kymlicka and Wayne Norman, "Return of the Citizen: A Survey of Recent Work on Citizenship Theory," *Ethics* 104 (1994)

Ronald Beiner ed., *Theorizing Citizenship* (1992)

Rogers Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (1997)

Mar 5. Acquiring citizenship: jus soli, jus sanguinis, and consent

Peter Schuck & Rogers Smith, *Citizenship without Consent* (1985), ch. 1, 4-5

Schuck & Smith, "Trump is half-right. Congress can end birthright citizenship." *Washington Post*, Oct 31, 2018

Peter Spiro, "Born American," in *Beyond Citizenship* (2008), 9-32

Further reading:

Gerald Neuman, "Book Review: Back to Dred Scott?" 24 *San Diego Law Review* 485 (1987)

Gerald Neuman, "Justifying U.S. Naturalization Policies," *Virginia Journal of International Law* 35 (1994)

Ayelet Shachar, *Birthright Lottery: Citizenship and Global Inequality* (2009)

Sarah Song, "What Does It Mean to Be an American?" *Daedalus: Journal of the American Academy of Arts and Sciences* 138 (2009)

Jacqueline Stevens, *States without Nations: Citizenship for Mortals* (2010)

Mar 12. The substance and worth of citizenship: Does citizenship make a difference?

Linda Bosniak, "The Difference that Alienage Makes," *The Citizen and the Alien* (2006), ch. 3 (pp.37-76)

Peter Spiro, "Take It or Leave It American," *Beyond Citizenship* (2008)

Further reading:

T. H. Marshall, "Citizenship and Social Class" (1950)

Judith Shklar, *American Citizenship: The Quest for Inclusion* (1991)

Hiroshi Motomura, *Americans in Waiting: The Lost Story of Immigration and Citizenship in the U.S.* (2006)

Sarah Song, "Democracy and Noncitizen Voting Rights," *Citizenship Studies* 13 (2009)

Mar 19. Citizenship and national identity: Do you have special obligations to your fellow citizens that you don't have to the rest of humanity?

David Miller, *On Nationality* (1995), chs. 2-3 (pp. 17-80)

Thomas Pogge, "Moral Universalism & Global Economic Justice," *World Poverty & Human Rights* (2002), 97-123

Further reading:

Thomas Nagel, "The Problem of Global Justice," *Philosophy & Public Affairs*, 33 (2005): 113-47

Joshua Cohen and Charles Sabel, "Extra Rempublicam Nulla Justitia?" *P&PA* 34 (2006): 147-75

A.J. Julius, "Nagel's Atlas," *P&PA* 34 (2006): 176-92

Samuel Scheffler, "Liberalism, Nationalism, & Egalitarianism," *Boundaries & Allegiances* (2001), 66-81

Rogers Smith, *Stories of Peoplehood: The Politics and Morals of Political Membership* (2003)

Yael Tamir, *Liberal Nationalism* (1993)

Mar 26: No class – spring break

Apr 2: No class – makeup TBD (makeup will be devoted to discussing your paper ideas)

Please work on your paper sketch

Apr 9. Multicultural citizenship: Is equal citizenship compatible with group-differentiated rights?

Will Kymlicka, *Multicultural Citizenship* (1995), chs. 1-2, 5-6

Susan Okin, *Is Multiculturalism Bad for Women?* (1999), pp. 9-34

Further reading:

Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire* (2006)

Sarah Song, *Justice, Gender, and the Politics of Multiculturalism* (2007)

Charles Taylor, “The Politics of Recognition” in *Multiculturalism*, ed. Amy Gutmann (1994)

Jeremy Waldron, “Minority Cultures and the Cosmopolitan Alternative,” *University of Michigan Journal of Law Reform* 25 (1992): 751-93

Iris Marion Young, *Justice and the Politics of Difference* (1990)

***April 16 - Paper sketch due**

Draft a short paper sketch (no more than 500 words—“sketch” implies half-baked ideas are ok!). Before class on April 16, upload to bCourse under the Assignments tab in the folder titled “Paper Sketches.”

Apr 16. Beyond citizenship?

Martha Nussbaum, “Patriotism and Cosmopolitanism,” in *For Love of Country* (1996)

Yasmin Soysal, “Toward a Postnational Model of Membership,” in *Limits of Citizenship* (1994), 136-62

Peter Spiro, “Beyond American,” in *Beyond Citizenship: American Identity after Globalization* (2008), 137-57

Further reading:

K. Anthony Appiah, *Cosmopolitanism: Ethics in a World of Strangers* (2007)

Rainer Bauböck, *Transnational Citizenship: Membership & Rights in International Migration* (1994)

Seyla Benhabib, *Another Cosmopolitanism* (2006)

David Jacobson, *Rights across Borders: Immigration and the Decline of Citizenship* (1997)

Richard Rorty, *Achieving Our Country: Leftist Thought in Twentieth-Century America* (1999)

***May 6 - Final papers due**

Please save your paper in Word format and upload to bCourse under the Assignments tab in the folder titled “Final Papers.”