

## **Philosophical Issues in Anti-Discrimination Law TT18**

John Gardner, All Souls College | [john.gardner@law.ox.ac.uk](mailto:john.gardner@law.ox.ac.uk)

14:00-16:00 on Thursdays in weeks 2-4-6-8

All Souls College (staircase VII, room 2 - directly above the Hovenden Room)

In this seminar we will investigate some of the main concepts that crop up in contemporary anti-discrimination law and its associated literature. That includes the concept of discrimination itself. We will also investigate some of the possible rationales for having anti-discrimination laws, with a view to seeing what implications those rationales might have for doctrine and policy. In order to undertake that investigation we will discuss what, if anything, is wrong with discriminating, quite apart from the law. Our emphasis will not be on any particular jurisdiction. The readings (selected from a very large literature) are by authors from all over the world. They are mainly philosophical readings. We will not be reading statutes or cases. Therefore some existing knowledge of anti-discrimination law in one or more jurisdictions would be helpful for participants.

In each class we will take a close look at just two or three readings. The full list appears below. It is important to do the reading in advance of each class as the format will be, so far as possible, that of a round-table discussion. The reading list also includes some questions for you to think about in advance of each class.

The seminar is not associated with any particular course or examination. All are welcome, space permitting. However the seminar is primarily aimed at graduate students in the Law Faculty, including BCL/MJur students taking Comparative Human Rights, Comparative Equality Law, Constitutional Theory, or related courses (as well as research students working on nearby topics).

### **Seminar 1. What is discrimination?**

K Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry into the Nature of Discrimination* (2013), [pp13-30](#)

S Moreau, [‘What is Discrimination?’](#) *Phil & Pub Aff* 38 (2010), pp143-179

J Waldron, [‘Indirect Discrimination’](#) in S Guest and A Milne (eds), *Equality and Discrimination: Essays in Freedom and Justice* (1985), pp83-100

- Can there be discrimination without intention?
- Is discrimination a bad thing by definition?
- Does discrimination necessarily involve comparisons?

### **Seminar 2. When is discrimination wrong?**

R.M. Dworkin, [‘Why Bakke has No Case’](#), *New York Review of Books* 10.11.77

D Hellman, *When is Discrimination Wrong?* (2008), [pp1-33](#)

T Khaitan, *A Theory of Discrimination Law* (2015), [pp117-139](#)

- Is discrimination wrong only when directed against the disadvantaged?
- Is discrimination wrong because insulting or insulting because wrong?
- Does the wrongness of discrimination depend on its consequences?

### **Seminar 3. Equality and individuality**

E Holmes, [‘Anti-Discrimination Rights Without Equality’](#) *Modern L Rev* 68 (2005), pp175-194

B Eidelson, [‘Treating People as Individuals’](#) in D Hellman and S Moreau (eds), *Philosophical Foundations of Discrimination Law* (2013) [typescript pp1-30]

- Is it a mistake to call anti-discrimination law by the name ‘equality law’?
- If equality, then equality of what?
- How can we respect human diversity without discriminating?

### **Seminar 4. Anti-discrimination law and policy**

J Raz, [‘Multiculturalism: A Liberal Perspective’](#) in Raz, *Ethics in the Public Domain* (1995)

H Collins, [‘The Vanishing Freedom to Choose a Contractual Partner’](#), *Law and Contemporary Problems* 76 (2013), pp71-88

- How does a policy of nondiscrimination differ from a policy of toleration?
- Does anti-discrimination law presuppose that discrimination is immoral?
- Is anti-discrimination law an attack on freedom of association?