

## **Philosophical Issues in Anti-Discrimination Law TT19**

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14:00-16:00 on Thursdays (**except** week 7, 13 June)

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 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). Graduate students from philosophy or politics might also be interested.

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

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

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

B Eidelson, *Discrimination and Disrespect* (2015), [chs 1 and 2](#)

### **Week 2. Discrimination and groups**

O Fiss, '[Groups and the Equal Protection Clause](#)', *Philosophy and Public Affairs* 5 (1976), 107

K Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry into the Nature of Discrimination* (Oxford 2013), [pp30-36](#)

T Khaitan, *A Theory of Discrimination Law* (Oxford 2015), [ch 5](#)

### **Week 3. Discrimination and equality**

J Raz, *The Morality of Freedom* (Oxford 1986), [ch 9](#)

E Holmes, '[Anti-Discrimination Rights Without Equality](#)' *Modern Law Review* 68 (2005), pp175-194

P Shin, '[The Substantive Principle of Equal Treatment](#)' *Legal Theory*, 15 (2009), 149

### **Week 4. Discrimination and dignity**

D Reaume, '[Discrimination and Dignity](#)' *Louisiana Law Review* 63 (2003), 645

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

M Rosen, '[Dignity: the Case Against](#)' in C McCrudden (ed), *Understanding Human Dignity* (London 2013)

### **Week 5. Discrimination and freedom**

J Gardner, '[On the Ground of her Sex\(uality\)](#)' *Oxford Journal of Legal Studies* 18 (1998), 167

S Moreau, '[What is Discrimination?](#)' *Philosophy & Public Affairs* 38 (2010), 143

B Eidelson, '[Treating People as Individuals](#)' in D Hellman and S Moreau, *Philosophical Foundations of Discrimination Law* (Oxford 2013)

**Week 6. Discrimination and diversity**

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

T Macklem, *Beyond Comparison: Sex and Discrimination* (Cambridge 2003), ch 5

I Young, [‘Structural Injustice and the Politics of Difference’](#) in T Christiano and J Christman (eds), *Contemporary Debates in Political Philosophy* (Oxford 2009)

**NB: No seminar in week 7**

**Week 8. Discrimination and distribution**

S Segall, [‘What's so Bad about Discrimination?’](#) *Utilitas* 24 (2012), 82

R Segev, [‘Making Sense of Discrimination’](#) *Ratio Juris* 27 (2104), 47

J Gardner, [‘Discrimination: The Good, the Bad, and the Wrongful’](#), *Proceedings of the Aristotelian Society* 118 (2018), 55