

Universität Luzern

17FS RF Theory of Anti-Discrimination Law (Guest Course)

Instructor: John Gardner, University of Oxford

Schedule: 13.03.17 (16.15-19.30) | 14.03.17 (16.15-19.30) | 15.03.17 (16.15-19.00) |
16.03.17 (16.15-19.30)

Location to be advised

Course outline

In this short but intensive course we will investigate some of the main concepts and techniques that are used in anti-discrimination law around the world today. 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 try to work out 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 Denmark, the UK, Canada, India, and the US. They are mainly philosophical readings. We will not be reading statutes or cases. Therefore some previously-acquired background knowledge of anti-discrimination law in one or more jurisdictions would be helpful in taking the course.

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 our discussions will begin with reflection on what we have read. The reading list below also includes some questions for you to think about in advance of each class.

Please note that there is **required reading for the first class** on Monday 13.03.17.

The final class (on Thursday 16.03.17) will have an anomalous format. The main discussion will run only until around 18.00. Then Prof Gardner will present a public lecture for a wider audience (18.15-19.30) entitled 'Discrimination Law: What is it Good For?' This lecture also forms part of the course.

A study pack is available containing printed scans of all of the readings. They are also linked below so that you can read them online if you prefer.

There will be a 60 minutes written exam, which will be scheduled by the Dean's Office approximately three weeks after the course. During one of the classes we will discuss the format of the examination, and the expectations.

If you have any questions, please email john.gardner@law.ox.ac.uk

Seminar 1 (13.03.17). 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 (14.03.17). When is discrimination wrong?

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 (15.03.17). 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 (16.03.17). Anti-discrimination law and policy

J Raz, '[Multiculturalism: A Liberal Perspective](#)' in Raz, *Ethics in the Public Domain* (1995) [typescript pp170-191]

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?