

**Discrimination
Seminar Syllabus Fall 2017**

Professor Andrei Marmor
am2773@cornell.edu

In this seminar we will study a range of theoretical puzzles about the law regulating discrimination. We will use examples from discrimination in contexts of employment, service-provision, education, and others, and on various grounds, such as, race, religion, age, sexuality, political viewpoint, etc.. We will address questions at a fairly abstract level, trying to understand the philosophical principles that might explain the various aspects of anti-discrimination law. Such questions include, for example, the fundamental question of what makes discrimination wrongful, when it is? Does its wrongness depend on the consequences, and/or on historical contingencies? What makes a certain ground of discrimination an improper ground? What should be the reach of anti-discrimination laws (e.g. should they regulate romantic relationships, family relations, etc.)? Is indirect discrimination ('disparate impact') really a kind of discrimination or a violation of some principle of equality? And similar questions.

Grading and Policies

Final grade for the seminar will be based on final term paper. Instructions will be provided separately. During the term students will be asked to make short presentations on chosen topics, those will not be graded.

The reading material, cases excluded, is posted here: <http://blogs.cornell.edu/marmor/> Click on "Teaching Material" and from the pull-down menu select "Discrimination". Articles and book chapters are listed alphabetically by author's name.

Reading & Schedule:

INTRODUCTION:

Consequentialism & Deontology

I. WHAT MAKES DISCRIMINATION WRONGFUL?

a. Intention

L. Alexander, "What Makes Wrongful Discrimination Wrong?.." *141 U Penn L Rev*, (1992), 149., pp. 149-189.

The problem of reaction qualifications:

K. Lippert-Rasmussen, *Born Free and Equal?* (Oxford 2014), chapter 9

Wilson v. Southwest Airlines (US Dis.c. Texas, 1981)

Fesel v. Masonic Home Delaware Inc.

b. Demeaning Message

D. Hellman, *When Is Discrimination Wrong?* (Harvard U Press, 2008), pp. 13-37.

c. Deliberative Freedom

S. Moreau, “What is Discrimination?”, *38 Philosophy & Public Affairs*, (2010), 143.

d. Consequences

R. Arneson, “Discrimination, Disparate Impact, and Theories of Justice” in Hellman & Moreau (eds), *Philosophical Foundations of Discrimination Law*, (Oxford, 2013), [Henceforth *Phil Foundations* book] chapter 5.

e. Pluralism

L. Blum, “Racial and other Asymmetries: A Problem for the Protected Categories Framework for Anti-discrimination Thought”, in *Phil Foundations* book, chapter 9.

II. INDIRECT DISCRIMINATION/DISPARATE IMPACT

D. Reaume, “Harm and Fault in Discrimination Law: The Transition from Intentional to Adverse Effect Discrimination”, *2 Theoretical Inquiries in Law*, (2001), 349.

Griggs v. Duke Power Co.

Ricci v. DeStefano

III. STEREOTYPES & GENERALIZATIONS

B. Eidelson, “Treating People as Individuals” in *Phil Foundations* book, chapter 10.

A. Appiah, “Stereotypes and the Shaping of Identity”, *88 Cal L. Rev* (2000), 41

LA Department of Water v. Manhart

IV. DISABILITY

D. Wasserman, “Is Disability Discrimination Different?”, *Phil Foundations* book, chapter 13.

US Airways v. Barnett

V. SEX

A. Kapczynski, “Same-Sex Privacy and the Limits of Antidiscrimination Law”, *112 Yale L. J.*, (2003), 1256.

K. MacKinnon, “Difference and Dominance: On Sex Discrimination”, from *Feminism Unmodified*, ch 2.

Price Waterhouse v. Hopkins

Meritor Savings Bank v. Vinson

Oncale v. Sundowner Offshore Services Inc.

Young v. UPS

VI. HOUSING

Fair Housing Council v. Roommate.com (USCA, 9th Dist. 2012)

Burlington v. Mt Laurel (“Mt Laurel I”) SC of N.J., 1975)

VII. EXEMPTIONS

a. Religion

M. Minow, “Should Religious Groups be Exempt from Civil Rights Laws?”, *48 Boston C. L.Rev.*, (2007), 781.

P. Horwitz, “The Hobby Lobby Moment”, *SC Comments* (2014), 154

Burwell v. Hobby Lobby Stores

Hosana Tabor v. EEOC

b. Expressive Associations

Roberts v. US Jaycees

BSA v. Dale