

Syllabus
Philosophy of Rights (730:450:01)
Spring 2014
Mon & Thurs 11:30-12:50

Professor: Alec Walen, Ph.D., J.D.

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Office Hours: After class and by appointment

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Primary Texts:

- Griffin, J., *On Human Rights* (Oxford University Press, 2009).
- Various readings posted on the course website.

Course Description:

Rights are a central part of our moral and legal landscape. As Joel Feinberg once wrote, “Having rights enables us ... to look others in the eye and to feel in some fundamental way the equal of anyone.”¹ But just what does it mean to have rights? What are they? How did the idea evolve? How do they function? How strong are they? What happens if they conflict with each other? Why should we think that we have them? And how can they be used in practical discourse to improve the lives of humans (or even animals)? These are the main questions we will examine in this course.

There is no one canonical book on rights, so I have pulled together materials that are for the most part contemporary and cover the relevant questions well. Mostly these materials discuss rights in the abstract, though using particular rights for the sake of illustration. The focus of the course will, likewise, be on questions about rights in the abstract, not particular rights. We will end the course, however, with a protracted look at an important category of concrete rights, the one with the largest role in international law these days: the human rights.

I will expect you to do the reading *before* class for each day, and I may call on people randomly—a technique one picks up as a law professor, the hat I wear on alternate semesters—to see what they think about the reading. If you are not prepared on a particular day, and do not want to be called on, just let me know before class starts. But if you do that, you will be counted as absent on that day.

Attendance is a prerequisite for doing well in this class. If you miss more than five classes, you will be removed from the class. Please make every effort to attend, be prepared, and be on time. If you are late, that will count as half a miss. I will send around a sign-up sheet each day to see who is there. Additionally, if you expect to miss class, please use the University absence reporting website <https://sims.rutgers.edu/ssra> to indicate the date and reason for your absence. An email is automatically sent to me.

¹ Joel Feinberg, “The Nature and Value of Rights,” *The Journal of Value Inquiry* 4 (1970) p. 252.

Bases of Your Grade:

Your grade will be based on four elements: two papers, quizzes, class participation, and comments on the papers of your fellow students. The first paper will be in 1800-2250 word range, and will count for 30% of your grade. The second paper will be in the 2250-3000 word range and will count for 40% of your grade. (You must provide a word count on each paper; the ranges provided above are only guidelines, but you should have good reason to depart substantially from them.) There will be occasional quizzes on the readings, which will count, collectively, for 10% of your grade. Class participation will count for 10%. And your commentary on the work of others will count for 10%.

Papers

I will provide general guidance for paper topics a few weeks before each paper is due. You are welcome to propose a topic that seems different from what I suggest, but if you deviate from the paper ideas I suggest, you must send me an email with a clear proposal, and let me consider it. If I approve it, you may write on it; if I don't, then we should *talk* to find a topic that you are interested in and that fits the class.

Commenting on the work of others may be new to you, so I will write a few words about the process here—I will provide more guidance on it later. You are to post drafts of your papers on the web. I will not grade these, but a subset of your classmates will comment on them. These comments should have a length of about one to three pages of double-spaced text. You will then grade the usefulness of these comments on a four-point scale. You will then revise your paper and submit a final draft for me to grade.

Comments must be substantive and constructive. They should help the author to think about something he or she overlooked, or reconsider something he or she wrote. This is a crucial skill to develop, on both ends. No one who publishes books or articles goes off on their own and writes complete masterpieces. They always have others look at what they write and give them critical suggestions. No matter how good one is, it is very hard to see one's own blind spots, so critical response and revision is crucial to making one's work good. Accordingly, it is crucial to be able to *take* constructive criticism. But to be a valuable member of a community of people working on a project, it is also crucial to be able to *give* it.

Since there are too many people in the class to expect each of you to read the work of everyone else, I will divide you into groups, and you will be responsible only for giving critical comments to those in your group. (You will be in different groups for the first and second paper.)

Late assignments drafts and late comments put an unfair burden on others. If you are late with your draft, others will be free from their obligation to comment, and their comment grade will be an average based on the other papers on which they comment. You will get only the comments that others *voluntarily*, out of the goodness of their hearts, give you. Late comments are still useful, but less so than prompt ones, so they will be docked one point for each day late. Late final paper drafts will lose a grade step (e.g. an A- becomes a B+) for each day late.

Early assignments are a different matter. Since all papers will be shared, there is a danger that some who do their work at the last minute will poach on the work of those who post their work early. Of course, if anyone poaches on the work of another without

citing it, he or she is guilty of plagiarism. Nonetheless, to minimize the temptation to poach, please do not post your drafts more than 24 hours before they are due.

Comments, however, can profitably build on the comments that have gone before. Therefore you are encouraged to post your comments as soon as you like. You may even post more than once if you want to comment on another who has commented on your earlier comments or who has simply taken a different view. Just one caution: don't go far over the equivalent of three double-spaced pages in the total length of your comments on any one paper; you don't want to drown the author in a flood of comments.

Lastly, a few words on academic integrity: All work in this course must be your own. That means that if you copy text from any source, even if you change a word or two, you must quote it and provide a citation. If you take an argument from someone, even if you put it in your own words, you must acknowledge your intellectual debt—this includes comments you get from your fellow students. And if you claim to have knowledge of facts that are not common knowledge, you must provide a source for that too. Any form of cheating or plagiarism will result in automatic failure for the *class*, not just the assignment, and will be reported to the appropriate university committee, which may result in suspension or expulsion from the university. If you are unclear what this means, it is your responsibility to ask for clarification.

Tentative Course Schedule (readings to be done *before* the class date listed below)

Introductory material

1/23: Introduction

1/27: Structure: Hohfeldian elements: Wenar, "Rights," § 2.1

1/30: History: Edmundson, pp. 3-30

2/3: History: Edmundson, pp. 31-59

Justifications

2/6: Utility: Wenar "Rights" § 6; Mill, "On the Connection between Justice and Utility"

2/10: Dignity: Feinberg, "The Nature and Value of Rights"; Darwall, *The Second-Person Standpoint*, pp. 3-20.

2/13: Dignity cont.: Nagel, "Personal Rights and Public Space," §§ 1-3.

Functions

Part I: Will vs Interest Theory

2/17: The basic distinction and Hart on the Will theory of rights: Wenar "Rights," § 2.2; Hart, "Are There Any Natural Rights?"

2/20: Raz on the Interest theory of rights: Raz, "The Nature of Rights."

2/24: Wenar, "The Nature of Claim-Rights."

2/27: Steiner, "Directed Duties and Inalienable Rights."

3/3: Kramer, "Some Doubts about Alternatives to the Interest Theory of Rights,"

Part II: Exclusionary Reasons, Strength and Conflict

3/6: Rights as exclusionary reasons: Raz, *The Authority of Law*, pp. 16-25; Schauer & Pildes, "Electoral Exceptionalism and the First Amendment," § 2.

3/10: Strength—Non-Absolutism: Wenar, "Rights," § 5.2; Thomson, "Ought."

First Paper Draft Due Before Class

3/13: Strength—Specificationism: Shafer-Landau, "Specifying Absolute Rights."

SPRING BREAK

3/24: Right to do wrong: Waldron, "A Right to do Wrong."

Comments on First Paper Due Before Class

Part III: Forfeiture, Liability, and the Mechanics of Claims

3/27: Forfeiture: Wellman, C., "The Rights Forfeiture Theory of Punishment"

3/31: Liability: McMahan

Final Version of First Paper Due Before Class

4/3: Mechanics of claims, Walen and Wasserman, "Agents, Impartiality, and the Priority of Claims Over Duties"

4/7: Mechanics of Claims cont., Walen, "Transcending the Means Principle."

Application in Human Rights

4/10: Nickel, "Human Rights," §§ 1-3; Universal Declaration of Human Rights; Griffin, chapter 1.

4/14: Griffin, chapters 2-3.

4/17: Griffin, chapters 4-5.

4/21: Griffin, chapters 6-7.

4/24: PROFESSOR OUT OF TOWN

Draft of Second Paper Due by 5:00 pm

4/28: Griffin, chapters 8-9.

5/1: Griffin, chapters 11-12.

Comments on Second Paper Due Before Class

5/5: Beitz, "Human Dignity in the Theory of Human Rights."

5/9: **Final Version of Second Paper Due by 5:00 pm**

Bibliography

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- Hart, H.L.A., "Are There Any Natural Rights?" reprinted in J. Waldron, ed. *Theories of Rights* (Oxford University Press, 1984).
- Kramer, M., "Some Doubts about Alternatives to the Interest Theory of Rights," *Ethics* 123 (2013): 245-263.
- McMahan, J. [TBD]
- Mill, J.S., "On the Connection between Justice and Utility," Chapter 5 in *Utilitarianism* (1861).
- Nagel, T., "Personal Rights and Public Space," Chapter 3 in *Concealment and Exposure* (Oxford University Press, 2002).
- Nickel, J., "Human Rights," *Stanford Encyclopedia of Philosophy* <http://plato.stanford.edu/entries/rights-human/>.
- Raz, J., *The Authority of Law: Essays on Law and Morality* (Oxford University Press, 1979).
- Raz, J., "The Nature of Rights," Chapter 7 in *The Morality of Freedom* (Oxford University Press, 1986).
- Schauer, F., & Pildes, R., "Electoral Exceptionalism and the First Amendment," *Texas Law Review* 77 (1999): 1803, 1808-1819.
- Shafer-Landau, R., "Specifying Absolute Rights," *Arizona Law Review* 37 (1995): 209-225.
- Steiner, H., "Directed Duties and Inalienable Rights," *Ethics* 123 (2013): 230-244.
- Thomson, J.J., "Ought," Chapter 3 in *The Realm of Rights* (Harvard University Press, 1990).
- Waldron, J., "A Right to do Wrong," Chapter 3 in *Liberal Rights* (Cambridge University Press, 1993).
- Walen, A., and Wasserman, D., "Agents, Impartiality, and the Priority of Claims Over Duties; Diagnosing Why Thomson Still Gets the Trolley Problem Wrong by Appeal to the 'Mechanics of Claims,'" *Journal of Moral Philosophy* (2012): *Philosophy* 9 (2012): 545-571.
- Walen, A., "Transcending the Means Principle," *Law and Philosophy* (2013): DOI: 10.1007/s10982-013-9187-0.
- Wellman, C., "The Rights Forfeiture Theory of Punishment," *Ethics* 122 (2012): 371-393
- Wenar, L., "The Nature of Claim-Rights," *Ethics* 123 (2013): 202-229.
- Wenar, L., "Rights," *Stanford Encyclopedia of Philosophy* <http://plato.stanford.edu/entries/rights/>.

- Universal Declaration of Human Rights (1948):
<http://www.un.org/Overview/rights.html>