

# Cognitive Disability and Human Rights

Pozen Family Center for Human Rights

The University of Chicago

**Spring 2018**

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Office Hours: Tuesday, 1:00-3:00, Rosenwald 216

## Course Description:

*The Universal Declaration of Human Rights* is intended as a list of rights the protection of which all human beings should enjoy. However, in its preamble, the *Declaration* mentions “reason” and “conscience” as universal attributes of human beings, thus expressing a certain conception of what a human being is. Does this conception serve well all human beings? What about cognitively or intellectually disabled persons? More specifically, when thinking about particular human rights, like the right to life, political participation or education — how are these rights supposed to be protected for cognitively and intellectually disabled persons? These are the questions we will consider in this class.

The course is structured around *The Universal Declaration of Human Rights*. In each module we will focus on one theme from the *Declaration* and its relation to cognitively disabled persons.

Among the questions we will ask:

- How attuned is the human-rights discourse to the interests and needs of the cognitively disabled?
- What, if any, paternalistic interventions are justified with regard to the cognitively disabled?
- Should cognitively disabled citizens be allowed to vote?
- To what extent should the *choice* and *consent* of a cognitively disabled person matter? Can a cognitively disabled person consent to sex? Can they consent to medical procedures and experiments? Can they consent to get married? To work?

## Course Aims:

The field of disability studies is rapidly growing. By the end of the class, you will gain knowledge of one aspect of this emerging field. More specifically, you will become acquainted with central ethical and political questions that arise in relation to cognitive disability, and with the various considerations that bear on answering them.

Similarly, human rights have become a central element in our contemporary ethical thinking and practice. In this class, you will have an opportunity to deepen your understanding of what human rights are, their promise, and perhaps their limitations.

The questions we ask in this course are questions our society continues to debate. I hope this course will give you the conceptual tools to enter this wider conversation as active participant.

## Readings and Class Discussion:

All readings will be made available on the Canvas website. Please note that most sessions require reading more than one text.

The topics we discuss are sensitive. Some of the readings we will read are evocative, some are downright provocative. You might find some of the readings challenging, frustrating, even offensive. My aim in choosing these texts is to give you a sense of the various voices that exist in contemporary ethical conversations on cognitive disability. In assigning a text, I do not take a stand on whether the author is right or wrong, or even on whether the text is “good” or not. That will be for you to determine, and for us as a group to discuss.

I hope you will find the class discussion an open and welcoming space to share whatever feelings the readings evoke in you, and that you will find the critical examination of texts you strongly disagree with a rewarding experience.

If you have a disability that you think might affect your ability to participate as an equal member in the discussion or your ability to discharge the course’s requirements, please let me know, and together we can think of accommodations that can be beneficial to you. For further resources on campus, see <https://disabilities.uchicago.edu/>.

<b>Grading:</b>	7 Response papers:	70%
	2 discussion prompts:	10%
	Participation in class discussion:	20%

**Response papers** should be emailed to me by **Sunday at 5pm** prior to the meetings in which the texts are discussed. For each response paper, choose one text from the Tuesday meeting and one text from the Thursday meeting. For each text, list the 5 claims you think are the most significant claims the author makes. Then, choose one of those claims, and write a paragraph in response to it. Use up to one page per text. You are asked to submit 7 such papers during the quarter, and each should be up to 2 pages long.

**Discussion prompts:** Twice during the quarter, you and another student will be asked to prepare a question for a group discussion in class.

**Participation** credit accrues to those who regularly and actively participate in class. I expect you to come to class after you have read and thought about the material, and to contribute your share to a stimulating and thoughtful discussion.

## Course Reading Plan

### Week 1: The Basics

**March 27:** No assigned readings. In class: *The Universal Declaration of Human Rights*.

**March 29:**

- “Intellectual Disabilities - Classification, Epidemiology and Causes.”, ch. 1 of: *Clinical psychology and people with intellectual disabilities, 1998*, Eric Emerson et al. (eds), Wiley: New York.
- “United Nations Convention on the Rights of Persons with Disabilities”
- Siebers, Tobin. "Disability and the Right to Have Rights." In *Disability Theory*, 176-86. Ann Arbor: University of Michigan Press, 2008.

### Weeks 2 and 3: Moral Status

**“All human beings are born free and equal in dignity and rights...” (Article 1)**

**April 3:**

- McMahan, Jeff. "Cognitive Disability, Misfortune, and Justice." *Philosophy & Public Affairs* 25, no. 1 (1996): 3-35.
- McMahan, Jeff. "Radical Cognitive Limitation." In *Disability and Disadvantage*, edited by Kimberley Brownlee and Adam Cureton, 240-59. Oxford: Oxford University Press, 2009

**April 5:**

- Kittay, Eva Feder. "At the Margins of Moral Personhood." *Ethics* 116, no. 1 (2005): 100-31.

**April 10:**

- Jaworska, Agnieszka. "Respecting the Margins of Agency: Alzheimer's Patients and the Capacity to Value." *Philosophy & Public Affairs* 28, no. 2 (1999): 105-38.
- Jaworska, Agnieszka. "Caring and Full Moral Standing." *Ethics* 117, no. 3 (2007): 460-97.

**April 12:**

- Singer, Peter. "Speciesism and Moral Status." *Metaphilosophy* 40, no. 3/4 (2009): 567-81.
- Tillman, Rachel. "Ethical Embodiment and Moral Reasoning: A Challenge to Peter Singer." *Hypatia* 28, no. 1 (2012): 18-31.

### Week 4: Agency

**“They are endowed with reason and conscience...” (Article 1)**

**April 17:**

- Wikler, Daniel. "Paternalism and the Mildly Retarded." *Philosophy & Public Affairs* 8, no. 4 (1979): 377-92.
- Turnbull, Rud, and Ann Turnbull. "Self-Determination for Individuals with Significant Cognitive Disabilities and Their Families." *Journal of the Association for Persons with Severe Handicaps* 26, no. 1 (2001): 56-62.

**April 19:**

- Shoemaker, David. "Responsibility and Disability." *Metaphilosophy* 40, no. 3/4 (2009): 438-61.
- Francis, Leslie P. "Understanding Autonomy in Light of Intellectual Disability." In *Disability and Disadvantage*, edited by Kimberley Brownlee and Adam Cureton, 200-15. Oxford: Oxford University Press, 2009.

**Weeks 5 and 6: The Right to Life and Security of Person**

***“Everyone has a right to life, liberty and security of person...” (Article 3)***

**April 24:**

- Kuhse, Helga, and Peter Singer. "Ethics and the Handicapped Newborn Infant." *Social Research* 52, no. 3 (1985): 505-42.
- Hubbard, Ruth. "Abortion and Disability: Who Should and Who Should Not Inhabit the World?" In *The Disability Studies Reader*, edited by Lennard Davis, J, 93-103. New York: Routledge, 2006.

**April 26:**

- Wilkinson, D. "Is It in the Best Interests of an Intellectually Disabled Infant to Die?" *Journal of Medical Ethics* 32, no. 8 (2006): 454-59.
- Read, Janet, and Luke Clements. "Demonstrably Awful: The Right to Life and the Selective Non-Treatment of Disabled Babies and Young Children." In *Disabled People and the Right to Life: The Protection and Violation of Disabled People's Most Basic Human Rights*, edited by Luke Clements and Janet Read, 148-75. New York: Routledge, 2008

**May 1:**

- Wasserman, David. "Ethical Constraints on the Allowing or Causing the Existence of People with Disabilities ". In *Disability and Disadvantage*, edited by Kimberley Brownlee and Adam Cureton, 319-51. Oxford: Oxford University Press, 2009.

**May 3:**

- Campbell, Jane. "It's My Life - It's My Decision? Assisted Dying Versus Assisted Living." In *Disabled People and the Right to Life: The Protection and Violation of Disabled People's Most Basic Human Rights*, edited by Luke Clements and Janet Read, 85-98. New York: Routledge, 2008.
- Shakespeare, Tom, and Bryan Vernon. "Disability Rights and Resuscitation: Do Not Attempt Reconciliation?". In *Disabled People and the Right to Life: The Protection and Violation of Disabled People's Most Basic Human Rights*, edited by Luke Clements and Janet Read, 99-109. New York: Routledge, 2008

**Week 7: Sex, Marriage and Parenting**

***“Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.” (Article 16)***

**May 8:**

- Gill, Michael. "Introduction: Sexual Ableism Exposed," and
- "Questions of Consent: Rethinking Competence and Sexual Abuse." In *Already Doing It: Intellectual Disability and Sexual Agency*, 1-46. University of Minnesota Press, 2015.

**May 10:**

- Buck v. Bell [274 U.S. 200 (1927)]
- Lombardo, P. A. "Three Generations, No Imbeciles: New Light on Buck V. Bell." *NYU Law Rev* 60, no. 1 (1985): 30-62.

**May 15:**

- Cepko, Roberta. "Involuntary Sterilization of Mentally Disabled Women." *Berkeley Journal of Gender, Law & Justice* 8, no. 122-165 (1993).

**May 17:**

- Thomsen, Frej Klem. "Prostitution, Disability and Prohibition." *Journal of Medical Ethics* 41, no. 6 (2015): 451-59.
- Appel, Jacob M. "Sex Rights for the Disabled?" *Journal of Medical Ethics* 36, no. 3 (2010): 152-54.

**Week 9: Political Participation**

***"Everyone has the right to take part in the government of his country..." (Article 21)***

**May 22:**

- Nussbaum, Martha. "The Capabilities of People with Cognitive Disabilities." *Metaphilosophy* 40, no. 3/4 (2009): 331-51.
- Bérubé, Michael. "Equality, Freedom, and/or Justice for All: A Response to Martha Nussbaum." *Metaphilosophy* 40, no. 3/4 (2009): 352-65.

**May 24:**

- Schriener, Kay, et al. "The Last Suffrage Movement: Voting Rights for Persons with Cognitive and Emotional Disabilities." *Publius*, vol. 27, no. 3, 1997, pp. 75–96.
- Redley, Marcus, Julian C Hughes, and Anthony Holland. "Voting and Mental Capacity: Voting Is a Political Right, not a Matter of Competence to Make Decisions." *BMJ: British Medical Journal* 341, no. 7771 (2010): 466-67
- Barclay, Linda. "Cognitive Impairment and the Right to Vote: A Strategic Approach." *Journal of Applied Philosophy* 30, no. 2 (2013): 146-59.

**Week 10: Education**

***"Everyone has the right to education..." (Article 26)***

**May 29:**

- Connor, David J., and Beth A. Ferri. 2007. "The Conflict within: Resistance to Inclusion and Other Paradoxes in Special Education." *Disability & Society* 22 (1): 63–77.
- Shaw, Belinda. "Inclusion or Choice? Securing the Right to Inclusive Education for All." In *Human Rights and Disability Advocacy* edited by Maya Sabatello and Marriane Schulze, 58-69. Philadelphia: University of Pennsylvania Press, 2014.