

# Wrongful Discrimination: Legal and Philosophical Perspectives

The University of Chicago Law School

Spring / 2019

Wednesdays 9:45-11:45, Laird Bell Quadrangle G

Instructor: Dr. Nethanel Lipshitz  
Office Hours: Thursdays, 10-noon, Room 403  
Email: [nethanel@uchicago.edu](mailto:nethanel@uchicago.edu)

## Course Description:

A life that is recognizably human involves a great deal of discrimination. We treat differently people we love and people we do not. We are closer to some of our friends more than to others. Not everybody gets hired to any job they want. Not everybody gets admitted to any school they want. Yet, we also recognize that some forms of discrimination are deeply *immoral*, and our legal systems prohibit certain forms of discrimination. What makes a certain form of discrimination morally wrong? In what cases should a political community legislate against discrimination? These are the questions we will take up in this course.

To help us think, we will read and discuss some contemporary legal and philosophical attempts to grapple with these questions. We will gradually develop a rich array of examples (both real and fictional) to push our thinking beyond its comfort zones, and we will situate the problem of wrongful discrimination in relation to broader issues in political philosophy: equality, freedom, fairness, merit, desert and justice. We will end with the interesting (and under-discussed) issues that are raised in relation disability and wrongful discrimination.

Here are some questions we will ask in this course:

- What distinguishes wrongful from benign discrimination?
- Is “wrongful discrimination” a helpful category for analyzing the ills of contemporary American society?
- Why some classifications and not others give rise to legitimate complaints of wrongful discrimination?
- Does the *intention* to discriminate matter? What about unintended “disproportionate impact”?
- Is “affirmative action” a legitimate practice?

If you have a disability that might affect your ability to participate 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/>.

## Reading plan:

Because this is an 8-week seminar, it is somewhat heavier in reading than my usual philosophy seminars. Make sure you make time every week to read the material carefully and think about it. Most readings will be available through the course website. We will also read the following two books, which you are asked to obtain:

- Loury, Glenn C. 2002. *The Anatomy of Racial Inequality*. Cambridge, Mass.: Harvard University Press.
- Hellman, Deborah. 2008. *When is Discrimination Wrong?* Cambridge, Mass.: Harvard University Press.

Loury's book is available for free through the Library's website. Hellman's book is available through the university bookstore.

<b>Grading:</b>	Three reading responses:	75%
	Discussion Questions:	14%
	Participation:	11%

**Reading Responses:** Up to 4,000 words for each reading response. Do not write just general reactions to the readings. Instead, like a good, short academic piece, you should focus on one argument or idea raised in the readings and then write a piece that has a central thesis—a claim of its own. Each reading response is worth 25%.

**Discussion Questions (Starting week 2):** By Tuesday at 7pm before each class, I ask that each of you posts *one* question for discussion on the Canvas website (in the “Discussions” section). I will start a “discussion” for each week with a question of my own. You can then post your question for that week on that thread. Before posting your questions, read the questions that came before you, so you do not repeat a question that was already posted. Be prepared to post a different question than you originally had in mind if a question very similar to that has already been posted. (Naturally, the earlier you post your question, the better the chances you will be able to post your original question). Also, before class, read everybody's questions, and think about one or two of the posted questions that are not your own. Each of the seven discussion questions is worth 2% of the final grade, to a total of 14% of your class credit.

**Class Participation:** You know what this is. Show up to class after you have read and thought about the material and your fellows' posted questions, participate in class discussion, and, if possible, do not use your lap tops. This component is worth the (somewhat odd) weight of 11% of your class credit.

### Reading plan:

#### Week 1: Introduction

- Loury, Glenn C. 2002. *The Anatomy of Racial Inequality*. Cambridge, Mass.: Harvard University Press. Ch. 1 and 2.
- Williams, Bernard. 1973. "The Idea of Equality." In *Problems of the Self*. Cambridge: Cambridge University Press. 230-49.

#### Week 2: Discrimination and the Equality of Persons

- Hellman, Deborah. 2008. *When is Discrimination Wrong?* Chapters 1-2 (pp. 1-58).
- *Recommended:* Chapter 3 (Pp. 59-85).

### Week 3: Merit and Affirmative Action 1

- Hellman, Deborah. 2008. *When is Discrimination Wrong?* Chapter 4 (pp. 89--113)
- Nagel, Thomas. 1973. "Equal Treatment and Compensatory Discrimination." *Philosophy & Public Affairs* 2 (4):348-63.

**First reading response due by Saturday, April 19, at 11:59pm (on weeks 1-3 readings)**

### Week 4: Merit and Affirmative Action 2

- Thomson, Judith Jarvis. 1973. "Preferential Hiring." *Philosophy & Public Affairs* 2 (4):364-84.
- Cohen, Carl. 2003. "Race Preference is Morally Wrong." from: Cohen, Carl, and James P. Sterba. *Affirmative Action and Racial Preference: a Debate*. Oxford: Oxford University Press. 23-45.
- Allen, Anita L. 2011. "Was I Entitled or Should I Apologize? Affirmative Action Going Forward." *The Journal of Ethics* 15, no. 3: 253-63.

### Week 5: Rationality

- Hellman, Deborah. 2008. *When is Discrimination Wrong?* Chapter 5 (Pp. 114-137)
- Tussman, Joseph, and Jacobus TenBroek. 1949. "The Equal Protection of the Laws." *California Law Review* 37, no. 3: 341-356. (Note the page numbers: they are just a section of the paper. You are encouraged to read the entire paper, of course, but only the assigned pages are required. Also note that this a very early paper, and much has changed since: keep the historical context in mind as you read it.)

**Second reading response due by Saturday, May 3, at 11:59pm (on weeks 4-5. If in the first reading response you did not write on week 3, you can write on it for this reading response)**

### Week 6: Intentions

- Hellman, Deborah. 2008. *When is Discrimination Wrong?* Chapter 6 (Pp. 138-172)
- Meyers, Melanie E. 1986. "Impermissible Purposes and the Equal Protection Clause." *Columbia Law Review* 86 (6):1184-209.

### Week 7: Beyond Discrimination

- Loury, Glenn C. 2002. *The Anatomy of Racial Inequality*. Cambridge, Mass.: Harvard University Press. Ch. 2 and 3.
- Young, Iris Marion. 1990. *Justice and the Politics of Difference*. Princeton, N.J.: Princeton University Press. Chapter 7.

Week 8: "Reasonable Accommodation": Disability and Discrimination

- Wasserman, David. 2013. "Is Disability Discrimination Different?" In *Philosophical Foundations of Discrimination Law*, edited by Deborah Hellman and Sophia Moreau. Oxford: Oxford University Press. 269-78.
- Jolls, Christine. 2001. "Antidiscrimination and Accommodation." *Harvard Law Review* 115 (2):642-99.

**Last reading response is due by Saturday, May 24, at 11:59pm (on the readings of weeks 6-8).**