

Justice Studies 695/ Humanities 730
The “Rights Revolution”
Fall 2004

Professor Cerullo

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Office hours: Friday 2:00-4:00, Justice Studies offices, 2nd floor Huddleston

It is all but impossible to think or talk about contemporary legal and moral controversies without invoking the idea of “rights.” It is the cornerstone of our over-all concept of justice, arguably the pivotal idea in our civic discourse. Yet few of us have undertaken any sort of sustained, critical examination of it. What exactly are “rights?” How, historically, have particular claims, preferences, and socio-economics risen to the status of publicly-recognized “rights?” What, philosophically, grounds them? How should we prioritize them? How should we deal with clashing rights claims? And what is happening to our rights at this particular point in our history?

Justice Studies 697 takes as its point of departure the enormous expansion in rights claimed by both groups and individuals in recent decades, described by some as the “rights revolution.” This development has elicited both applause and alarm, and we’ll examine the ethical, legal, and political dimensions of each. The challenge facing you as a student in JS 697 is to construct your own ideas about “rights” in contemporary society. They will be historically informed, philosophically defensible and, above all, yours.

READINGS: Mary Glendon, Rights Talk (NY: The Free Press, 1991)
John Locke, Second Treatise on Government
Jean-Jacques Rousseau, Discourse on the Origins of Inequality
Philippa Strum, When the Nazis Came to Skokie (Lawrence, Kan.:
University of Kansas Press, 1999)
Michael Ignatieff, Human Rights as Politics and Idolatry
(Princeton, N.J.: Princeton U. Press, 2001)
Misc., Course Reader

Unit 1 “Rights Talk” in America

Jan . 21 *Introduction*

Jan. 23 “*Rights*” in *Moral Discourse*

Reading: Judy Jarvis Thomson, “Self-Defense and Rights”
(on Blackboard)

Jan. 26 *Rights vs. Obligations: An Alternative Approach to Law*

Reading: Robert Cover, “Obligation: A Jewish Jurisprudence
of the Social Order” (on Blackboard)

Jan. 28 *A Rights-Driven History*

Reading: Daniel Rodgers, “Rights Consciousness in
American History” (on Blackboard)
Christopher Smith, “The Definition of
Constitutional Rights” (on Blackboard)

Feb. 2 *Rights in Contemporary Legal Theory*

Reading: Ronald Dworkin, “Rights as Trumps” (on Blackboard)

Feb. 4 *The “Rights Revolution”*

Reading: Mary Glendon, Rights Talk (pp. 1-75)

Feb. 6 *Missing Dimensions in American Rights Talk*

Reading: Mary Glendon, Rights Talk (pp. 76-145)

Feb. 9 *An Alternative Approach to Rights?*

Reading: Mary Glendon, Rights Talk (pp.145-183)

Feb. 11 *Review*

UNIT ESSAY DUE

Unit 2 Rights and the Social Good: Free Speech

Feb. 13 *The Free-Speech Principle*

Reading: Frederick Schauer, "The Free Speech Principle"
(in Course Reader)

Feb. 16 Film: The People vs. Larry Flint (optional)

Feb. 18 *Drawing the Line: Pornography*

Reading: *Hustler Magazine v. Falwell*, U.S. Supreme Court
(<http://www.bc.edu/bc org/avp/cas/comm./free speech/hustler.html>)

Feb. 20 *A Case for the Prosecution*

Reading: Irving Kristol, "Pornography, Obscenity, and the
Case for Censorship"
(<http://www-personal.umich.edu/~wbutler/kristol.html>)

Feb. 23 *Pornography and Human Rights*

Reading: Reimann, "Prurient Interest and Human Dignity:
Pornography Regulation in West Germany"
(on Blackboard)

Glimmeveen and Hagenbeek v. The Netherlands
before the European Commission on Human Rights
(Links posted on Blackboard)

Feb. 25 *Drawing the Line: Hate Speech*

Reading: Philippa Strum, When the Nazis Came to Skokie, begin

Feb. 27 *The Lessons of Skokie*

Reading: Philippa Strum, When the Nazis Came to Skokie, finish

March 1 *Rethinking the American Free Speech Tradition*

Reading: Owen Fiss, "Free Speech and Social Structure"
(Link on Blackboard)

March 3 *Free Speech and the Quality of Public Discourse*

Reading: Cass Sunstein, "A New Deal for Speech"
(in Course Reader)

March 5 *Review*

March 8 *Debate: Should Corporations Have Free Speech Rights?*

Unit 3 The Philosophical Background: Natural Rights and Their Critics

March 10 “*Nature and Nature’s God ...*”: *The Lockean Approach*
Reading: John Locke, Second Treatise on Government (begin)

March 12 *Locke and Property Rights*
Reading: John Locke, Second Treatise on Government (finish)

March 22 “*... and everywhere he is in chains ...*”: *The Rousseauist Approach*
Reading: Jean-Jacques Rousseau, Discourse on the
Origins of Inequality

March 24 *Reconsidering Rousseau*
Reading: Rousseau, selections from The Social Contract

March 26 *Review -- Research Prospectus Due*

March 29 *Conferences*

April 2 *Conferences*

April 5 *Natural Rights Debunked: Burke and Bentham*
Reading: Jeremy Waldron, selections from “Nonsense on Stilts:” ...
(in Course Reader)

April 7 *Natural Rights Debunked: Marx*
Reading: Karl Marx, “On The Jewish Question” (on Blackboard)
Mark Tushnet, “

April 9 *A Contemporary Critique*
Reading: Mark Tushnet, “An Essay on Rights” (Link on Blackboard)

April 12 *Open Discussion: Are Natural Rights Fictional?*

- April 14 *Rights and 20th Century History*
Reading: Isaiah Berlin, “Two Theories of Rights”
(in Course Reader)
- April 16 *Rights and Neoliberal Theory*
Reading: John Day, “John Rawls’ A Theory of Justice”
(on Blackboard)
- April 19 *Review*
UNIT ESSAY DUE
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Unit 4 Beyond Natural Rights: Contemporary Legal Debates

- April 21 *Re-Theorizing Universal Rights*
Reading: Martha Minnow, “Rights and Cultural Difference”
(on Blackboard)
- April 23 *Situated Rights: Race*
Reading: Alan Freeman, “Racism, Rights, and the Quest for
Equality of Opportunity: A Critical Legal Essay”
(on Blackboard)
- April 26 *Situated Rights: Gender*
Reading: Catharine Mackinnon, “Difference and Dominance:
On Sex Discrimination” (on Blackboard)
- April 28 *Review*
UNIT ESSAY DUE
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Unit 5: International Human Rights

April 30 *Nuremberg as Turning Point*

Reading: Herbert Wechsler, "The Issues of the Nuremberg Trial"
(Link posted on Blackboard)

May 3 *The International Human-Rights Movement*

Reading: Michael Ignatieff, Human Rights as Politics and Idolatry,

May 5 *A Minimalist Agenda?*

Reading: Michael Ignatieff, Human Rights as Politics and Idolatry

May 7 *Review*

May 10 *Debate: Prosecuting Saddam Hussein*

May 17 RESEARCH PAPERS DUE

GRADING: Near the conclusions of Units 1, 3, and 4, you will be given essay assignments. You must do two of those three essays; you can choose which two. They will not be lengthy. Each essay will be worth approximately 20% of your final grade.

The major component of your final grade, 40%, will be your research paper. Its subject must be cleared with your professor, as must the sources on which it will be based. A brief *prospectus* is due on March 26, and you will hold an individual conference with your professor on March 29 or April 2. Both the *prospectus* and the conference are required, and the final paper will not be accepted without them.

In addition, 20% of your final grade will be determined by your participation in class discussion. This will include participation in two debates we will hold, one at the end of Unit 2 and the other at the end of Unit 5.

Attendance is mandatory. You will be penalized for unexcused absences.