

Syllabus
New Work on Rights and Risk
Rutgers 730:580; Princeton PHI 519
Spring 2018
Monday, 4:30-7:30pm

Professors:

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Course Description:

This seminar will be taught jointly by Alec Walen of Rutgers University and Johann Frick of Princeton University, and will be open to graduate students from both institutions. Six classes will take place at Rutgers, New Brunswick and six at Princeton (see the course schedule for details). We will discuss recent work in normative ethics connected to the topics of rights and of risk, chance, and luck.

The first part of the course (led by Alec Walen) will be devoted to a discussion of Walen's forthcoming book *Defending Against Threats: A Case Study in Rights Theory* (OUP), which aims to construct a systematic account of some central deontological commitments within a rights framework. The systematic nature of his account arises out of his attempt to derive content and structure for a theory of rights by grounding it in three principles: autonomy, equality, and the moral significance of welfare. His book is centrally focused on making sense of the right of self- and other-defense against threats, even innocent threats. But his project aims also to explain why it is harder, all else equal, to justify using people as a means than causing harm as a side effect, why causing harm is harder to justify than allowing harm, and why agents have special privileges not to act in ways that would maximize the good. It also aims to explain the limited significance of intervening agency. And at a most fundamental level, it aims to criticize and provide a better alternative to the common view of rights according to which it is sometimes permissible to "infringe" a right for the sake of more stringent rights or the greater good.

In the second part of the course (led by Johann Frick) we will discuss a set of interconnected ethical questions related to the notions of chance, risk, and luck:

- What is the role of chance in a theory of fairness? If a scarce good, or an unavoidable harm, cannot be divided among a group of persons with equal claims, does fairness

require that people be given an equal chance of receiving the good, or avoiding the harm?

- When is it morally permissible to impose a risk on someone without her consent? And what moral principles should govern the distribution of risks across persons? If it is foreseeable that a socially beneficial policy, by imposing small risks of harm on a large number of persons, will result in some people being harmed, how strong are the complaints of the eventual victims? Are they to be assessed from an *ex ante* or an *ex post* perspective?
- If a person was harmed by another person's risky behavior, how does the fact that the harm was not certain to eventuate bear on questions of moral responsibility and liability for compensation? If multiple individuals each contributed to making a harmful outcome more likely, how is moral responsibility and liability for compensation to be apportioned between them?
- What, if anything, might justify punishing successful crimes more severely than unsuccessful ones? Questions of law aside, is there also such a thing as *moral* luck? Are there cases in which the moral assessment of an agent, or of the action she performed, rightly turns on factors that were beyond the agent's control?
- In interacting with other persons, for instance in the context of criminal trials or war, we sometimes cannot be certain as to their moral status: Are they guilty or innocent? Are they a culpable aggressor or an innocent bystander who merely appears threatening? The distinctive uncertainty that arises under such conditions of "normative opacity" concerns not *what* will happen if we act thus and so, but *who* it will happen to, i.e. the moral status of the person affected by our action. What norms ought to govern our behavior in such cases?
- Finally, how ought we to think about the morality of risk-imposition in contexts where the very action that places some person at risk of harm is also that which causes them to exist? In every act of procreation, there is some small risk of creating a person whose life is not worth living. How does this problem of procreative risk affect the moral permissibility of procreation?

Bases of Your Grade:

If you are a Rutgers student, your grade will be primarily based on your final paper: we expect a normal paper in the range of 20-30 pages, discussing in some depth a topic raised by the materials in this course. However, part of your grade will come from class participation and short critical responses to the readings, to be posted on the "chatroom" portion of the course website. We expect students who are taking the course for a grade in this way to submit eight short comments (200-300 words) on the reading material. We seek a focused argument taking issue with something from the reading for that week. These are to be turned in via the class web page by midnight on Sunday.

If you are a Princeton graduate student wishing to receive a written unit in connection with this course, you, too, should write a paper of 20-30 pages connected to one of the topics discussed in this course. The submission of short comments is encouraged, but not required.

Tentative Course Schedule

Princeton classes will take place in Marx Hall, Room 201; Rutgers classes will be held at 106 Somerset Street, 5th floor seminar room.

Feb 5 (Princeton): Introduction to the course, followed by Introduction to Walen's book.

- Reading: Defending Against Threats (DAT), Chapter 1, § 1; Chapter 2, §§ 1-4, but not § 5, which will be discussed next week (students are, of course, welcome to read non-assigned material from this book).
- Supplementary texts:
 - For those not familiar with Hohfeldian elements of rights, read Leif Wenar, "Rights," § 2.1, *Stanford Encyclopedia of Philosophy* <http://plato.stanford.edu/entries/rights/>.
 - Other suggested readings: anything cited in the footnotes that seems of interest. The most important text that is not available electronically through an academic library is Parfit, *On What Matters*, Vol. 1, pp. 150-161, which is on the course website.

Feb 12 (Rutgers): The Basic Principles of Rights.

- DAT, Chapter 2, § 5; Chapter 3, §§1-2.
- Supplementary texts: anything cited in the footnotes that seems of interest. The most important text that is not available electronically through an academic library is Thomson, *The Realm of Rights*, chapter 3. It is on the course website.

Feb 19 (Rutgers): The Mechanics of Claims.

- DAT, Chapter 3, § 3.
- Supplementary texts: anything cited in the footnotes that seems of interest.

Feb 26 (Rutgers): Problems with the *Infringement Model* and Threshold Deontology

- DAT, Chapter 3, §§ 4-7.
- Supplementary texts: anything cited in the footnotes that seems of interest.

March 5 (Rutgers): A Misplaced Emphasis on Agency, and the Problem with the Hybrid Approach to Rights

- DAT, Chapters 4 & 5.
- Supplementary texts:
 - Feel free to read Chapter 6 as well, but it is of less theoretical significance; its primary value is in the context of just war theory itself.
 - Anything cited in the footnotes that seems of interest. The most important texts that are not available electronically through an academic library are Lazar, *Sparing Civilians*, chapter 3; McMahan, *Killing in War*, chapter 4, §§ 1-2; and Tadros, *The Ends of Harm*, chapter 11. All are on the course website.

March 12 and 19: SPRING BREAK (Rutgers THEN Princeton)

March 26 (Rutgers): The Agent-Patient Inference, Intervening Agency and the Right of Non-Sacrifice

- DAT, Chapters 7 & 8.
- Supplementary texts:
 - Feel free to read Chapter 9 as well, but it is just the conclusion, summarizing what went before.
 - Anything cited in the footnotes that seems of interest. The most important texts that are not available electronically through an academic library are Frowe, *Defensive Killing*, Chapter 5, § 2; Kamm, *Intricate Ethics*, pp. 164-173; and Tadros, *The Ends of Harm*, chapter 9. All are on the course website.

April 2 (Princeton): Chance and Fairness

- John Broome, “Fairness”, *Proceedings of the Aristotelian Society*, New Series, Vol. 91 (1990 - 1991), pp. 87-101
- Tim Henning, “From Choice to Chance? Saving People, Fairness, and Lotteries”, *The Philosophical Review*, Vol. 124, No. 2 (2015), pp. 169-206.

April 9 (Princeton): Risk-Distribution: Ex Ante or Ex Post?

- Johann Frick, “Contractualism and Social Risk”, *Philosophy & Public Affairs* Vol. 43, No. 3 (2015), pp. 175-223.
- Joe Horton, “Aggregation, Complaints, and Risk”, *Philosophy & Public Affairs*, *Philosophy & Public Affairs* Vol. 45, No. 1, pp. 54-81.
- Alec Walen, “Risk and Limited Interpersonal Aggregation” (draft).

April 16 (Princeton): Moral Responsibility and Compensation for Risky Harms

- Sara Bernstein, “Causal Proportions and Moral Responsibility” in David Shoemaker (ed.), *Oxford Studies in Agency and Responsibility, Volume 4* (Oxford: Oxford University Press, 2017). pp. 165-182.
- Alex Kaiserman, “Partial Liability”, *Legal Theory*, Vol. 23, No. 1 (2017), pp. 1-26
- Possibly: Johann Frick, “Probabilistic Causation, Moral Responsibility, and the Problem of Aggregate Effects” (draft).

April 23 (Princeton): Moral and Legal Luck

- Thomas Nagel, “Moral Luck” in *Mortal Questions* (New York: Cambridge University Press, 1979).
- David Enoch and Andrei Marmor, “The Case Against Moral Luck”, *Law and Philosophy*, Vol. 26, No. 4 (2007), pp. 405-436.
- David Lewis, “The Punishment that Leaves Something to Chance”, *Philosophy & Public Affairs*, Vol. 18, No. 1 (1989), pp. 53-67.

April 30 (Princeton): Normative Opacity, Self-Defense, and Procedural Rights

To accommodate Tommie Shelby's first Hempel Lecture (4-6pm in McCormick 101), this seminar will take place from 6:30-9:30pm.

- Renée Jorgensen Bolinger, "The Case for Conventional Defensive Permissions" (draft).
- Christopher Heath Wellman, "Procedural Rights", *Legal Theory*, Vol. 20, Issue 4 (2014), pp. 286-306.

May 7 (Rutgers): Risk and Creation

- Selections from Rivka Weinberg, *The Risk of a Lifetime* (Oxford: Oxford University Press, 2016).
- Possibly: Johann Frick, "The Asymmetry and the Specter of Antinatalism" (draft).