SYLLABUS

JUSTICE: DOMESTIC AND GLOBAL PERSPECTIVES – BLHV-275-01
Fall Term, 2014
   Thursdays: 5:20 PM – 7:50 PM

INSTRUCTOR:
   Dr. Steven L. Snell

OFFICE HOURS:
   Wednesdays: 2:00 PM -3:30 PM

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COURSE DESCRIPTION:
The course is designed to provide students with an overview of political theory relating to both domestic and global justice. First, it will examine various theories of domestic justice – including utilitarianism, possessive and choice-based libertarianism, and John Rawls’s theory of “justice-as-fairness”. The political theories contained in the readings express diverse (and in some cases highly controversial) concepts; these readings will comprise the first two parts of the course. In the third portion of the course, the focus shifts to global justice. Under what circumstances does a sovereign state have duties – negative or positive – to citizens of other nations? The course examines cosmopolitan theories of Charles Beitz and Thomas Pogge, critiques of these cosmopolitan theories by Thomas Nagel and Matthias Risse, and Rawls’s reasons for not extending his “two principles of justice” from the domestic context into the global context. Finally, the course will address practical proposals for holding multinational corporations responsible for complicity in abuses of human rights.

TEXTS: The books for the course include:

   JOHN RAWLS, JUSTICE AS FAIRNESS: A RESTATEMENT (Erin Kelly editor, Cambridge, MA: Harvard University Press, 2002) [$27.00]

   JOHN RAWLS, THE LAW OF PEOPLES (Cambridge, MA: Harvard University Press, 1999) [$24.00]

JOHN STUART MILL, “ON LIBERTY” AND OTHER WRITINGS (Stefan Collini editor, Cambridge: Cambridge University Press, 1989) [$16.99]


LEA BRILMAYER, JUSTIFYING INTERNATIONAL ACTS (Ithaca, NY: Cornell University Press, 1989) [$29.95]

These books should be available at the campus bookstore. Other readings – including scholarly articles and selections from other books - will be made available in digital form on Blackboard. “Supplemental Readings” listed on the syllabus are not required, but may be useful for students’ writing projects. These will be made available on reserve in the library or on Blackboard.

[While all of the books are available in print in relatively inexpensive paperback editions – which will be available at the campus bookstore – all have been in print for many years. Thus used copies are relatively easy to find. Students wishing to economize by purchasing used copies may consult either bookfinder.com or addall.com – both of which consolidate on-line advertisements by individual booksellers - providing a useful means for comparative-shopping.]

LEARNING OUTCOMES:
This course examines the concept of “justice” in the Western intellectual tradition from the nineteenth century to the present, with an emphasis upon contemporary theories of justice and their application to current social policies in democratic societies.

Substantively, the purpose of this course is:
1) To provide students with an overview of various theoretical approaches to the concept of justice;
2) To examine the normative and ethical implications of applying each of these theories to contemporary social problems;
3) To examine the impact of these theories of justice as applied in modern politics;

In attaining the substantive goals of the course, each student will be given the opportunity to develop further certain intellectual skills, including:
1) Analytical reasoning in comparing and contrasting the various theories of justice presented, including the recognition of the a priori assumptions and normative premises upon which each theory rests;
2) Assessment of the difficulties in moving from theory to practice - specifically in designing social policies based upon each of the theories of justice presented.
The course will provide students with the opportunity to hone their analytical and writing skills by completing two papers on topics of their own choice related to the subject-matter discussed in class. The first of these papers will be an interpretive essay examining one aspect of the concept of justice embodied in one of the theories. The second writing assignment will be a research paper in which each student is given the opportunity to apply one or more concepts of justice to social problems in the contemporary world.

**REQUIREMENTS AND GRADING:**

Each student’s grade will be based on completion of two writing assignments. The first paper – worth 40% of the final grade - is due via e-mail or in hard-copy form on the day of the seventh class meeting: October 9; the second assignment – which counts 60% toward the final grade - is due via e-mail by the end of business (5:00 PM) on December 11 (which is one week following the final day on which the class meets.) Deductions in grade will be made for work that is not completed on time – unless the reason for the delay is documented and deemed valid by University or BALS policies.

Theories of justice are by nature controversial. Each student will bring her/his own individual values and political beliefs to the class, and each should feel free to express those values and beliefs in her/his work. Grading for both papers will be based upon organization of the arguments and the clarity of presentation. A grade of “A” for the first essay should present a clear thesis and demonstrate effective use of the readings assigned throughout the first half of the semester, insightful analysis, and analytical reasoning of the variety displayed in scholarly writing in political theory. Essentially the same standards apply to the second paper, in addition to which students should make effective use of primary and secondary sources gleaned from their research – properly cited in footnotes or endnotes. Letter grades will correspond to the following numerical percentages: A: 100%-94%; A-: 93%-90%; B+: 89%-87%; B: 86%-80%; B-: 82%-80%; C+: 79%-77%; C: 76%-73%; C-:72%-70%; D+:69%-67%; D: 66%-60%; F: Below 60%.

The first writing assignment will be a paper that critically examines some aspect of one of the theories of justice in the assigned readings. This essay should not exceed 10 pages in length. The paper should address the a priori assumptions of the theory, its internal consistency, its strengths and weaknesses, and its potential efficacy in addressing political and social issues commonly encountered in the real world. The final draft will be due in class in Week 7 – October 9.

For the second writing assignment, each student will be asked to draft a longer paper (not exceeding 25 pages in length) which assesses the applicability of one or more of the theories of justice presented in the readings to particular social issues or ongoing political controversies. Students may critique the efficacy of a theory of justice in a particular political context, or compare two or more theories of justice in the manner in which each would address a social or political issue. Your final drafts will be due by the close of business (5:00 PM) on December 11 (one week after the final day on which the class meets).
While the grade for the class will be determined by the two assigned papers, I will take participation in class-discussion into consideration in raising students’ grades.

CLASS POLICIES:
Students are expected to attend class. Please notify me in writing or by e-mail in the event of illness or family emergency – either prior to class or at the earliest opportunity practical after the class has met for the week. Students also should notify me in the event that they need to be absent from class for religious observances. If absence from class for religious observances occurs one of the days on which a written assignment is due, the student should notify me in advance so that we can arrange another time for delivering the written assignment. I am free to talk with students in during my office hours (or by telephone at a pre-arranged time for a teleconference) regarding a lecture missed during an absence for religious observances, illness, or family emergency.

Please note that pursuant to B.A.L.S. program policy, students who miss three classes will receive failing grades for the course.

Students requiring an accommodation for a disability pursuant to the Americans with Disabilities Act of 1990, the Federal Rehabilitation Act of 1973, applicable local law, or standing University policy must contact the Academic Resource Center at (202) 687-8354 before the start of classes to establish eligibility and to coordinate reasonable accommodations. The Academic Resource Center is located in Leavey Center, Suite 335.

GEORGETOWN HONOR SYSTEM:
As with all course-work at this institution, the Georgetown University Honor Code and Honor System apply. The Honor Code Pledge is as follows:

“In pursuit of the high ideals and rigorous standards of academic life, I commit myself to respect and uphold the Georgetown University Honor System: To be honest in any academic endeavor, and To conduct myself honorably, as a responsible member of the Georgetown community, as we live and work together.”

Students agree that by taking this course all required papers may be subject to SafeAssign – which is available through Blackboard - for detection of plagiarism. The penalty for plagiarism will be failure of the assignment.

MAKE-UP CLASS
In the event of the cancellation of a class due to weather conditions, the class will be held on Friday, November 14 at 5:20 PM. For those students who are unable to attend, the make-up class will be recorded and made available online.
PART I
THEORIES OF DOMESTIC JUSTICE

WEEK 1: INTRODUCTION
The first session will address the general goals of the course, summarize the writing requirements, and provide a brief introduction to theories of justice through a brief lecture on Jeremy Bentham and utilitarianism.

One of the earliest proponents of utilitarianism, Jeremy Bentham did much to develop the concepts that later utilitarians employed as the foundations of their theories. An avid advocate for legal reform, he recognized that “maximum aggregate happiness” as an excessively lofty (and vague) concept. In response, Bentham sought to derive middle-range principles from “the greatest happiness principle”, which in turn would provide the source for substantive rules of law. Though his proposals for drafting a comprehensive code to replace the common law were rejected, his utilitarian theory has remained influential – as a model to be emulated or a pernicious conception to be challenged – for two centuries.

WEEK 2: JOHN STUART MILL AND UTILITARIANISM
While strongly influenced by Bentham, John Stuart Mill added some refinements to Bentham’s formulation of “the greatest happiness principle” – including the tension between individualism and the role of social conditioning to ensure that the latter (in its role of providing middle-range principles) did not promote rules or conduct detrimental to aggregate utility. In this session, we will examine how Mill grounded justice in utility – and how his theory links rights to the need for predictability and security.

Readings:

John Stuart Mill, On Liberty, Chapters 1-3

WEEK 3: JOHN RAWLS – “JUSTICE AS FAIRNESS”
Rawls’s “Justice as Fairness – a Restatement” reflects his mature conception of justice, developed in response to criticisms of his “Theory of Justice” (1971) and “Political Liberalism” (1993). In this first session on Rawls, the focus will be on the fundamental philosophical concepts in Rawls’s thought – including his reworking of the idea old idea of “social contract”, his “two principles of justice”, and the “argument from the original position”.

**Readings:**
John Rawls, Justice as Fairness: A Restatement, Parts 1-3: pages 1-134

**Supplemental readings:**


**WEEK 4: JOHN RAWLS – “JUSTICE AS FAIRNESS”**
In this second session on Rawls, the focus moves from the abstract to more concrete notions in “Justice as Fairness”. Having abandoned his earlier notion of a comprehensive (liberal) moral doctrine, Rawls turns toward a more limited “political conception of justice” – which people holding somewhat divergent comprehensive moral doctrines could endorse as the basis of a just society. The emphasis in this session will be upon the idea of an overlapping consensus and the question of stability.

**Readings:**
John Rawls, Justice as Fairness: A Restatement, Parts 4-5” pages 135-202

**Supplemental readings:**


**PART II**
**PROPERTY RIGHTS AND DISTRIBUTIVE JUSTICE**

**WEEK 5: PROPERTY RIGHTS, POSSESSIVE LIBERTARIANISM, AND LABOR MARKET REGULATION**
Beginning with John Locke’s theory that people obtain property rights through mingling their own labor with unclaimed natural resources, political theorist Robert Nozick grounds his discussion of justice wholly in the concept of individual autonomy and property rights. In addition to Nozick’s book, this class will examine three Supreme Court decisions that grapple with one issue that Nozick raises – namely the legitimacy of government regulation of private citizens’ right to enter into contracts. In reading
Nozick’s controversial theory, it may be helpful to ask yourselves questions about how Nozick would respond to issues raised by the political theorists we read earlier in the semester. While not entirely convincing their critics, the utilitarians (Bentham and Mill) provided a series of answers to the question of why individual members of a society would support a political system grounded in utilitarianism. Does Nozick provide an explanation for why individuals would adopt his theory for organizing their society? In examining the case law assigned for this session, does the Supreme Court’s retreat from recognition of substantive due process in labor-contract cases (involving property) coupled with the continued recognition of substantive due process in civil rights cases indicate an implicit endorsement of Rawls’ serial ranking of rights? Would Nozick’s conception of property rights satisfy the criteria for “stability” that Rawls sought to incorporate into his revised view of “justice as fairness” as outlined in “Justice as Fairness: A Restatement”?

Readings:

Robert Nozick, Anarchy, State and Utopia, pages xi-xiv, 10-17, 22-53, 149-164167-182, 232-238

Lochner v. New York, 198 U.S. 35

Coppage v. Kansas, 236 U.S. 1 (1915)

West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937)

Supplemental Readings:

Garrett Hardin, The Tragedy of the Commons, 162 Science 1243 (December 13, 1968)

Pierson v. Post, 3 Cai. R. 175 (N. Y. Sup. Ct. 1805)

WEEK 6: CHOICE-BASED LIBERTARIANISM
While Nozick’s brand of libertarianism focuses chiefly on property rights, Friedman takes as his starting-point the individual’s liberty to choose – to shape her/his life in accordance with personal values and to regulate her/his conduct to pursue individual goals or ends. Thus for the state to override individual choice, the state has a burden of showing a compelling reason for a restriction on individual liberty – and that its action constitutes the least restrictive means of accomplishing its goal. Thus the state can justify proscribing murder and theft of private property – as to allow people the liberty to engage in such activities would interfere with the liberty of other citizens. Friedman’s conception of justice fits neatly into social system based on a free market, where the laws of classical
microeconomics determine distribution of goods. Friedman’s system largely endorses laissez faire capitalism in the name of “free choice” – with a few exceptions for market-failures.

**Readings:**
Milton Friedman, Capitalism and Freedom (Chicago: University of Chicago Press, 1962), Chapters 1, 2, 6, 10, 12, Conclusion: pages 7-36, 85-107, 162-189, 190-202


**Supplemental Reading:**


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**PART III: GLOBAL JUSTICE**

**WEEK 7: INTRODUCTION TO INTERNATIONAL HUMAN RIGHTS**

This session will provide an introduction to the status of human rights under international law, examining the U. N. General Assembly’s Universal Declaration of Human Rights (1947). By definition, resolutions of the General Assembly are hortatory documents, lacking direct force of law but serving to bolster claims made under the doctrine of “*ius cogens*”. This session will also examine the International Covenant on Civil and Political Rights (1966) together with its two Protocols – in addition to the International Covenant on Economic and Cultural Rights (1966). The two covenants, in contrast with the General Assembly’s resolution, are multilateral agreements with binding force of law among signatory-states. **This 150-minute session will be held by teleconference and will provide a tutorial on research in international law – designed to provide students with information on conducting research for their second papers. For those students who are unable to attend, the session will be recorded and made available online.**

[First Papers are due.]

**Readings:**
Universal Declaration of Human Rights (1947) [PDF]

International Covenant on Civil and Political Rights (1966) [PDF]

International Covenant on Economic, Social and Cultural Rights (1966) [PDF]

Supplemental Readings:


WEEK 8: ECONOMIC INTERDEPENDENCE AND GLOBAL JUSTICE: A COMMUNITARIAN PERSPECTIVE

Seven years after the publication of John Rawls’s “Theory of Justice”, communitarian theorist Charles Beitz attempted to extend Rawls’s two principles of justice – including the “difference principle” – from the realm of domestic justice to that of global justice. Noting that trade in goods and services leads to economic interdependence that “produce[s] benefits and burdens” across national boundaries, Beitz maintains that “the role of a principle of distributive justice then would be to specify what a fair distribution of those benefits and burdens would be like.” For Beitz, individuals – not states – should be the focus of principles of global justice. States’ role in global justice should be instrumental, facilitating justice for their respective citizens – including “reductions in intercountry distributive inequalities.” He concludes: “[I]t should be understood that the international obligations of states are in some sense derivative of the more basic responsibilities that persons acquire as a result of the (global) relations in which they stand.” This session explores the ramifications of extending Rawls’s essentially domestic contractarian theory of justice into global sphere.

Readings:

WEEK 9: JOHN RAWLS - “THE LAW OF PEOPLES”

If Rawls in 1971 had left open the possibility of applying his “two principles of justice” beyond the borders of a particular state, he effectively foreclosed the debate on whether he had intended the “two principles” to apply globally with the publication of “The Law of Peoples” in 1999. Beitz’s interpretation of the “two principles” notwithstanding, Rawls continues to maintain that his was a theory of procedural justice – not distributive justice. As a practical matter, Rawls’s approach to international justice provides a basis for international relations, as the present state of world politics requires that hypothetically “just” states interact with states that would not pass muster under Rawls’ “two principles”. Such interaction, Rawls, maintains, may lead to reform. At issue is whether Rawls normatively concedes too much in granting respect to “decent” but “non-liberal” societies.

Readings:
WEEK 10: THE SCOPE OF A NATION’S DUTIES TO FOREIGN CITIZENS

Rejecting Beitz’s cosmopolitanism, Thomas Nagel embraces a “political conception” of justice governing a nation’s relationship to foreign citizens. Some human rights, Nagel contends, are “pre-political” – such as negative rights respecting “bodily inviolability, freedom of expression, and freedom of religion.” Socioeconomic justice, however, he regards as associational – derived from one’s interactions with others within the same society. As he explains: “That does not mean that on the political conception one state may do anything whatever to citizens of another. States are entitled to be left to their own devices, but only on the condition that they not harm others.” As to the distinction between “pre-political rights” and socioeconomic rights, he adds: “The most basic rights and duties are universal, and not contingent on specific institutional relations between people. Only the heightened requirements of equal treatment embodied in principles of justice, including political equality, equality of opportunity, and distributive justice, are contingent in this way.” He concludes: “[T]he path from anarchy to justice must go through injustice…[I]f we accept the political conception, the global scope of justice will expand only through developments that first increase the injustice of the world by introducing effective but illegitimate institutions to which the standards of justice apply, standards by which we may hope they will eventually be transformed. An example, perhaps, of the cunning of history.” A. J. Julius, however, rejects Nagel’s rigid dichotomy between universally-applicable pre-political rights and associational rights, and the corollary that associational rights (including allocation of private property) arise only within a state. As Julius observes: “[O]n its best development the members of different states are in the justice relation if their interaction links them closely enough”.

Readings:

WEEK 11: WORLD POVERTY – A COMMUNITARIAN PERSPECTIVE

Thomas Pogge amasses an alarming array of statistical data to support his contention that the present world order – dominated politically by sovereign nations and economically by multinational corporations – contributes to millions of needless deaths world-wide. On a theoretical level, Pogge’s observations pose a serious challenge to theories of justice grounded in microeconomic principles – such as that of Milton Friedman. For Friedman, the proper role of government is to guarantee that anticompetitive business practices do not impede the free market – thus allowing for the realization of justice by facilitating freedom of choice by individual citizens. Expressed in economic terms, government should provide rules that compel parties engaging in bilateral transactions for goods or services to internalize their costs. Failure to do so would violate “negative duties” owed to third parties. Friedman’s theory is premised
upon the notion of a government that has the power to regulate all parties within the economy – both individuals and corporations. Multinational corporations pose a significant obstacle to governmental regulation, as their activities and transactions extend across national boundaries – often placing their conduct beyond the reach of individual nations’ respective regulatory schemes. Activities deemed legal and “just” in one nation may produce externalities in another nation – which that nation’s government is powerless to prevent (or even unwilling to prevent in the case of some repressive authoritarian regimes). Pogge’s argument poses problems for Rawls as well. Rawls’s theory presupposes the existence of sovereign states. By confining his two principles of justice – including the “difference principle” – to domestic justice, Rawls’s theory is less than helpful in addressing the activities of multinational corporations engaged in global commerce.

**Readings:**

**WEEK 12: THE CONCEPT OF SOVEREIGNTY AND CRITIQUE OF POGGE’S COSMOPOLITAN PROPOSAL**
In Chapter 6, Pogge addresses the challenges faced by fledgling democracies. Chapter 7 contains the most controversial component of Pogge’s theory - specifically the institutional structure necessary for global justice. Seeking to avoid the pitfalls of centralized global government outlined by Nozick and others, Pogge maintains that sovereignty should “be widely dispersed in the vertical dimension…[I]t is…nonsensical to think that in a multilayered order must be concentrated on one level exclusively. As history of federal regimes clearly shows, a vertical division of sovereignty can work quite well in practice, even while it leaves some conflicts over the allocation of powers without a reliable legal path of authoritative resolution.” In response, Matthias Risse challenges Pogge both on his interpretation of statistical data relating to world poverty and on the viability of his proposed solution.

**Readings:**

Matthias Risse, How Does the Global Order Harm the Poor?, 33 Philosophy & Public Affairs 349-376 (2005)

**Supplemental Readings:**
WEEK 13: THE VERTICAL APPROACH

If Rawls’s “Law of Peoples” pays too little heed to the rights of individuals and Pogge’s scheme is (as his critics maintain) unworkable in practice, is there a viable alternative that recognizes the inevitable role that independent states must play in the global order while simultaneously placing upon states an explicit normative duty to respect rights of foreign citizens domiciled on foreign soil? Drawing both on her experience as a conflict-of-laws scholar and her practical work in international development, Lea Brilmayer offers the “vertical approach”. Eschewing cosmopolitanism, she (as Rawls) grounds her theory in the liberal contractarian tradition. The approach is two-fold. First one ascertains a particular state’s standard of domestic justice (e.g. Rawls’s “justice-as-fairness”) and then applies it equally both to the state’s own citizens and to foreign citizens – whether living within its own borders or abroad. The normative touchstone is consistency (treating a state’s own citizens and foreign citizens alike) – not a comprehensive value system such as that rejected by Rawls as incompatible with respect for cultural pluralism.

Readings:

WEEK 14: HOLDING MULTINATIONAL CORPORATIONS ACCOUNTABLE FOR RESPETING HUMAN RIGHTS IN A GLOBAL ECONOMY-PRACTICAL SOLUTIONS

Despite her practical background in international development, Lea Brilmayer’s “vertical approach” – like the theories of Bentham, Mill, Rawls, and Nozick explored in the “Domestic Justice” readings for this course – is formulated at a high level of abstraction. In contrast, the readings for the final session address practical proposals for compelling multinational corporations to respect human rights. All of these articles accept the existing world order – dominated by sovereign states. Florian Wettstein poses the question of whether corporations have an ethical duty to “help protect human rights by putting pressure on perpetrating host governments involved in human rights abuses”. Recognizing that in most legal contexts corporations lack status under international law, Peter Muchlinski offers (inter alia) the controversial suggestion that nations exercise “universal jurisdiction” over them – as international law currently permits with acts of piracy on the high seas – applying their own respective domestic laws and sanctions in the process. Patrick MacKlem dissents, maintaining that international recognition of universal jurisdiction would confer rights as well as duties upon multinational corporations, granting exemption from sanctions in some cases where at present extraterritorial application of domestic law would permit sanctions. (In short, MacKlem maintains that there must be a sufficient nexus between a corporation and the nation that seeks to apply its law to the corporation’s activities.) Finally, Stephen Kobrin seeks solutions in the application of “soft law”, non-binding codes, and hybrid transnational public/private regimes applying non-hierarchical compliance mechanisms to regulate the activities of multinational corporations.
Readings:


Supplemental Readings:


[Second writing assignment is due via e-mail on Thursday, December 11, 2014.]