

**POLS 377 Topics in Law and Politics:
“Equal Rights and the Politics of Vulnerability” (Spring 2013)
Mondays 9:30 am – noon in BUSAD C102**

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Course Description:

This course interrogates the politics of equal rights, legal autonomy, and vulnerability. American thinking about equal treatment presupposes an autonomous and self-determined subject. This thinking grew out of the tradition of liberal individualism that has shaped much of American law, and was strengthened by many rights movements asserting the right to equal treatment for marginalized or disenfranchised groups. These movements sought to build on the American understanding of equality by elevating the citizenship status of groups for whom the promises of equal treatment were denied. This raises significant questions about the limitations of the “simple equality” doctrine: how, for example, do we guarantee equal opportunities for groups deemed different? When does treating people differently emphasize their differences or stigmatize or hinder them on that basis? And when does treating people the same become insensitive to their difference and likely to stigmatize or hinder them on that basis?

Our course will examine this “dilemma of difference” for selected groups that are traditionally regarded as *vulnerable* populations: we will focus primarily on children and non-human animals. What does it mean to occupy a legal status of vulnerability? How does the law negotiate vulnerability by balancing issues of protection with issues of self-determination? In this balancing act we will see how the law tends to posit equal rights as a clash of rights between competing interests. For example, we will look at the state’s responsibility for securing children’s rights to health and welfare as they clash with parental rights to religious freedom in questions of schooling, curriculum, and in the refusal of life-saving medical care. Next we will consider the rights of non-human animals, and the degree to which our concerns for animal welfare have transformed to questions over legal rights for animals. What does it mean to have standing before the law? The final section of the course will consider questions of autonomy and vulnerability for other vulnerable populations, such as people with disabilities or terminally ill patients who seek the right to physician assisted suicide. We will decide on the subject of the final two classes as a group.

Course Requirements:

Class Attendance and Participation: This class only meets once a week, so class attendance is mandatory – your presence and participation are a vital part of everybody’s learning. I will take attendance, and I will strive to make each class enjoyable and productive. Please note that I will run this class seminar-style which means that it will rely on student-generated discussion rather than lectures. Your class participation, which means demonstrated

preparation and active engagement in discussion and debates counts for 40% of your final grade.

Readings: To succeed in this class you must attend class prepared to participate by completely reading all assigned readings for that day. This class has a heavy reading schedule, essentially combining one week's reading into once class meeting. Expect to read between 40 and 50 pages per week, and to read them carefully and punctually. All readings are available for downloading from the class website on *Laulima*. There are no textbooks. Be sure to always bring a copy of the readings to class, either electronically or as a hard copy. Be sure not to wait until Sunday night to get your reading done for this class – you will most certainly be overwhelmed by doing a week's worth of reading in one sitting. Stagger your readings over the week, and take careful notes on the issues you find important and/or confusing. Much of the readings are from law journals which should not scare you off (I don't expect a legal background for this class) but should prompt good questions for us to begin our discussions.

Reading Presentations: Each of you will sign up for one class to give a reading presentation. Depending on the size of our class you will be working alone or in a group (max 3 students) covering all of the assigned readings for that day, so you must meet with your group members before class and co-ordinate your efforts. You must also meet with me prior to your presentation. Reading presentations must answer the following questions:

1. What is the central question the author is asking?
2. Why is this question important?
3. Give two specific examples of how the question is answered (evidence)
4. Were you convinced? Did you learn something valuable from this piece?

After you address these four points you will present at least one (max 2) questions for the class to discuss and serve as the leader of this discussion. Reading presentations should take no more than 30-40 minutes, meaning that each student should take a maximum of 10 minutes for his/her presentation. You may use a variety of tools for your presentations, both individually, or collectively: outlines, blackboard, debates, dramatization, etc. You have license to be creative in the ways you present the readings to the class.

4. Final Paper and Mock Conference: You will write a 7-10 page final paper on the politics of vulnerability of a group of your choice: you may select one of the groups we have studied, or you may select a new group. Your paper must use a minimum of four sources: you may select a maximum of two of the assigned sources, but you must select two new ones in addition. You will write your papers in stages: first, you will submit a paper proposal which outlines your topic and explains why it is important. Next, you will compile your list of sources, with a brief description of each source. Then you will write a first draft. I will place you in writing groups in which you will comment on each other's first drafts. You will then revise your paper and present it at a mock conference which we will hold during our last two class meetings. After the feedback you receive at our conference you have the option to revise the paper again before you hand in your final copy.

- a. Paper Proposal (5%): due March 4
- b. Annotated Bibliography (5%): due March 18
- c. First Draft (15%): due April 8
- d. Peer Feedback in writing groups (5%): due April 15
- e. Final Paper (20%): due May 6, 2012

Course Evaluation: Your final grade will be based on the following

class attendance & participation	40%
reading presentation	10%
paper proposal & bibliography	10% (5% each)
first paper draft	15%
peer feedback	5%
final paper	20%

Course website: This course has its own website on UH Lualima (lualima.hawaii.edu) which you should access frequently.

Office hours: My office is in Saunders 614, and I am there most days. My office hours are on Mondays and Thursdays, 1-2 pm, but please feel free to schedule meetings at different times. I am eager to hear from you about questions or feedback you have about this class. If you are concerned with *any* aspect of this class please contact me right away - I can only help you if I know there is a problem. The best way to reach me is by e-mail (hey@hawaii.edu).

A Note on Email Communications: Please note that you should give at least 24 hours between your email to me and your expectation of a reply. You should not expect emails to be answered in the evening or on weekends. Please ensure that your email has an appropriate subject line, such as 'POLS 377 Assignment Question' and include your full name. Please do not write emails as though they are texts – you should consider all email communication with faculty as business letters. A word of warning: non-UH email addresses often end up in spam folders. Please use your UH email account to be certain that your email arrives without delay in an Inbox and not a spam folder. For more suggestions on composing professional emails in corresponding with faculty please consult <http://www.wellesley.edu/socialcomputing/Netiquette/netiquetteprofessor.html>

Accessibility Statement: I am committed to making this class accessible to all students. Please contact me privately if you require disability-related accommodations of any kind. The KOKUA program on campus (956-7511) coordinates reasonable accommodations for students with documented disabilities.

Plagiarism Policy: Plagiarism is academic theft: it is taking somebody else's words or ideas as your own and not crediting the source. Turning in the same paper for two courses also constitutes plagiarism. Plagiarism is a serious offense and will result in automatic failure of

the course. Please consult the UH Student Conduct code for exact definitions, (www.catalog.hawaii.edu/about-uh/campus-policies1.htm)

Classroom rules regarding electronic equipment: NO iPod earphones. NO telephones. NO text messaging. NO computers in class unless you are taking notes or reading articles electronically. Students using computers must sit in the front row.

Class Syllabus: the following is our reading schedule for the semester. It is subject to change as we develop our flow as a class. Please keep checking our website for updates

*******IMPORTANT NOTE: THIS READING LIST MAY BE REVISED AFTER OUR SECOND MEETING JANUARY 14 *******

I. Introduction to the Course and Theoretical Foundations

January 7 First day of class

- Introduction to the course and to each other

January 14 Theoretical Foundations: The Dilemma of Difference and the Vulnerable Subject

- Martha Minow. Making All the Difference: Inclusion, Exclusion, and American Law (Chapters 1 & 2)
- Martha Fineman. The Vulnerable Subject: Anchoring Equality in the Human Condition. 2008 Yale Journal of Law and Feminism

Optional Reading: Martha Fineman. "The Vulnerable Subject and the Responsive State" 60 Emory Law Journal (2010)

January 21 No class: Martin Luther King Day

January 28 Theoretical Foundations: The American Approach to Individual Autonomy, Equal Rights, and The State's Role in Ensuring Economic Rights

- Susan Bandes. "The Negative Constitution: A Critique" 88 Mich. L. Rev. 2271 (1989-1990)
- Linda Keller. The American Rejection of Economic Rights as Human Rights and the Declaration of Independence: Does the Pursuit of Happiness Require Basic Economic Rights? 19 *New York Law School Journal of Human Rights* 557 (2003)
- Mary Ann Mason. "The U.S. and the International Children's Rights Crusade: Leader or Laggard?" 38 *Journal of Social History* (2005) (8 pages)

II. Section One: Rights of the Child

February 4 Thinking About Children's Rights

- Schmidt and Repucci. "Children's Rights and Capacities" Ch 4 in *Children, Social Science, and the Law* (for background)

- Martha Minow. "Children's Rights: Where We've Been and Where We're Going" 68 *Temple Law Review* (1995) (for background)
- Samantha Godwin. "Children's Oppression, Rights, and Liberation" 2011 *Northwestern Interdisciplinary Law Review* (56 pages)

Optional Reading: Elisa Poncz. "Rethinking Child Advocacy after *Roper v Simmons*: Kids are Just Different and Kids are Like Adults Advocacy Strategies" 6 *Cardozo Pub. Law, Policy & Ethics Journal* 273 (2007-2008)

February 11 Balancing Children's Rights and Parent's Constitutional Privacy Rights: Child Abuse

- Barbara Woodhouse. "Child Abuse, the Constitution, and the Legacy of *Pierce v Society of Sisters*" 78 *U. Det. Mercy L. Rev.* 479 2000-2001
- Barbara Woodhouse. "Constitutional Rights of Parents and Children in Child Protective and Juvenile Delinquency Investigations" 2011 *International Society of Family Law, North American Conference* (15 pages)
- Anne Dailey. "Constitutional Privacy and the Just Family" 67 *Tulane Law Review* (1992-1993) p. 955

Optional Reading: Barbara Woodhouse. "Who Owns the Child? *Meyer* and *Pierce* and the Child as Property" 33 *William & Mary Law Review*, 1992

February 18 No school, President's Day

February 25 Balancing Children's Welfare and Parents' Religious Rights: refusing medical care for children

- Douglas Diekema. Parental Refusals of Medical Treatment. The Harm Principle as Threshold for State Intervention. *Theoretical Medicine* 25: 243–264, 2004.
- Diekema et al. Symposium on "Liability for Exercising Personal Belief Exemptions from Vaccination" 2009 *Michigan Law Review* First Impressions
- Hickey and Lyckholm. Child Welfare versus Parental Autonomy: Medical Ethics, The Law, and Faith-based Healing. *Theoretical Medicine* 25: 265–276, 2004

Optional Reading: Beauchamp. "Methods and Principles in Biomedical Ethics" <http://jme.bmj.com/content/29/5/269.full>

March 4 Children's Rights and Religion in Schools

- **Paper Proposal Due**
- James Dwyer. Parents' Religion and Children's Welfare: Debunking the Doctrine of Parents' Rights 1994 *California Law Review*
- Moore. "How Well do Biology Teachers Understand the Legal Issues Associated with the Teaching of Evolution in Schools?" *Bioscience* 2004 (6 pages)
- Clough. "Diminish Students' Resistance to Biological Evolution" *The American Biology Teacher* 1994
- Eric DeGroff. "Parental Rights and Public School Curricula: Revisiting *Mozert* after 20 Years" 38 *Journal of Law & Education*, 2009

Optional Reading: Emily Buss. "The Adolescent's Stake in the Allocation of Educational Control between Parent and State" 67 *The University of Chicago Law Review* (2000)

III. Section Two: Animal Rights

March 11 Animal Welfare and Animal Law: from Protection to Rights

- Jeff Leslie and Cass Sunstein. "Animal Rights without Controversy" 2007 *Law and Contemporary Problems*
- Shigehiko Ito. "Beyond Standing. A Search for New Solutions in Animal Welfare" 2006 *Santa Clara Law Review*
- Lesley Rogers and Gisela Kaplan. "Think or Be Damned: the Problematic Case of Higher Cognition in Animals and Legislation for Animal Welfare" 2006 *Animal Law*

Optional Reading: David J. Wolfson & Mariann Sullivan. "Foxes in the Hen House: Animals, Agribusiness and the Law: A Modern American Fable"

March 18 Animals as Vulnerable Subjects under the Law

- Ani Satz. "Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy, and Property." 2009 *Animal Law*
- Taimie Bryant. "Sacrificing the the Sacrifice of Animals: Legal Personhood for Animals, the Status of Animals as Property, and the Presumed Primacy of Humans." 2008 *Rutgers Law Journal*
- **Annotated Bibliography due**

March 25 no class: Spring Break

April 1 Animal Rights Activism

- Megan Senatori and Pamela Frasch. "The Future of Animal Law: Moving Beyond Preaching to the Choir" *Journal of Legal Education* (2010)
- NPR : [Coop D'Etat: Farmers, Humane Society Partner On Chicken-Cage Revolution](http://www.npr.org/blogs/thesalt/2012/01/26/145900751/ex-foes-stage-coop-detat-for-egg-laying-chickens)
<http://www.npr.org/blogs/thesalt/2012/01/26/145900751/ex-foes-stage-coop-detat-for-egg-laying-chickens>
- Jamieson et al. "Every Sparrow that Falls: Understanding Animal Rights Activism as Functional Religion." 2000 *Society and Animals*
- *Reading on PETA lawsuit, TBA*

IV Section III: Other Vulnerable Populations:

April 8 Class Choice

- **First paper draft due**

April 15 Class Choice

- **Peer reviews**

April 22 and April 29 student presentations