

PHIL 206 *Topics in Law & Morality: Lesbian, Gay, & Transgender Rights* Syllabus, Spring 2012

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Office Hours: Wednesday 10:00-12:00; Thursday 3:00-5:00; and by appointment.

Required Texts:

Murdoch & Price, *Courting Justice: Gay Men and Lesbians v Supreme Court* (Basic Books, 2001)

David A.J. Richards, *The Sodomy Cases* (U. Press of Kansas, 2009)

Paisley Currah & others, *Transgender Rights* (U. Minnesota Press, 2006)

In addition to the above texts, you will have a number of online reading assignments posted to OAKS, denoted by '<___>', and highlighted in [blue](#).

Course Description:

What is the legal status of lesbian, gay, and transgender relationships in our society today, and the history behind that legal status? What is the current and likely future legal status of same-sex marriages? Or adoption and custody laws with respect to gay or lesbian parents? How has anti-discrimination employment and housing law evolved with respect to sexual orientation (e.g., gays in the military) or trans identity? What about the legal status of transgender identity in its own right, or its medical status with respect to health insurance law? What about the medical rights of intersexed children? We will explore a number of these questions historically to begin with, involving an examination of how the kinds of social attitudes hostile to LGBT rights gradually evolved in our culture. And we will finish up by examining an array of contemporary legal developments concerning many of these issues.

This course does not presuppose a prior background in philosophy, specifically. In addition to philosophy majors and minors, this material may be of special interest to majors in Political Science, History, Psychology, Sociology, Religious Studies, and especially to pre-law students and Women's & Gender Studies majors & minors.

General Education Competencies:

This course addresses a variety of Gen. Ed. competency goals, in varying degrees. Chief among these will be exposure to "perspectives and contributions of the academic discipline" of philosophy, as applied specifically to the interface between our cultural aspirations concerning civil and human rights in two closely intertwined areas (gender identity & sexual identity), and the cultural reality of existing legal institutions and practices. You will be introduced to some important theoretical debates and historical developments concerning our legal practices governing gender & sex, together with their implications for the broader concept of *legal moralism*—the legal enforcement of morality. The course is, in the first sense, a component of modern human history within our own culture, and in the second a critical analysis of some traditional views about the nature and proper scope of the law, as a cultural institution. You will be developing your analytic and critical reasoning skills through exposure to some of the ideas, theoretical arguments, and legal reasoning which have produced our contemporary conceptions of gender and sexual identity, and the expressions of moral value judgments which the related legal institutions embody. Your mastery of these ideas and arguments will be assessed through the course exams. Through a writing project (explained below), you will also be tasked with the challenge of assessing one or more primary sources of this topic area: the judicial opinions in important appellate-level court cases concerning LGBT rights.

Course Requirements:

Reading Assignments

This course centers around discussion based on a series of assigned readings. If you don't read the assignment, you can't discuss the material in a very intelligent and informed way. It is therefore crucial to the success of the course that each of you read the assigned material faithfully and regularly. The individual assignments are of moderate length, as appropriate for an intermediate-level philosophy course. But historical material, and especially philosophical and legal material, which together comprise most of the course assignments, require careful and reflective reading to digest properly. I suggest that you read through, once, over the week-end, all of the material assigned for the following week. Then, on the night before class, read the following day's assignment a second time through.

Reading Quizzes

As the spirit moves me, I will periodically administer a short (10-minute) quiz governing issues covered in the assigned reading on the current day. Frequently I'll include a question or two from the previous day's material. (So review your notes after each class, as well as reading the material assigned for the next class!) Each of these quizzes will consist of several multiple choice and short answer questions. Since the dates for these quizzes are unannounced, and since I do not normally allow make-ups, I will drop two quizzes (your two lowest grades, if you haven't missed two or more quizzes) at the end of the semester. I do not allow make-ups for missed quizzes without *documented* medical or family emergencies. (E.g., "the dog ate my alarm clock" does not count as a family emergency, even if you bring in a broken alarm clock with teeth marks.) Quizzes will be administered at the beginning of class. (I.e., if you show up late on a quiz day, you're just out of luck.)

There are four purposes for this exercise: (1) to encourage you to attend class regularly and do the assigned reading on time; (2) to encourage you to read carefully and thoughtfully; (3) to encourage you to review what you learned after each class; (4) to reward you for taking (1)-(3) seriously. You'll get more out of the class this way, and you'll be able to participate more effectively in class discussions.

Exams: There will be three exams, mostly non-cumulative, except for comparative questions. Dates are noted in the reading assignment calendar below. Each exam will consist of a combination of multiple choice Qs, quotation ID short essay Qs, and a mid-length essay Q (i.e., roughly six paragraphs), with most of the weight on the quotation and essay questions. (You will have some choice among those.) For each exam, the focus will be on material covered since the previous exam, although there may be some comparative questions involving earlier topics. I will provide study questions about a week in advance for each exam.

Court Decision Critique Paper: You will also be required to write a critical analysis of a philosophically significant LGBT-related court decision, or perhaps a related or interestingly contrasting pair of decisions (approximately 7 pages, typed, double-spaced), on a case (or cases) we are not discussing in class. The point here is not merely, or even primarily, to explain the decision or the argument in the case(s) you have selected, but to use the case(s) to illustrate, or critique, one of the philosophically significant debates about the proper scope of LGBT rights, which might itself be a perspective we have discussed in the course, or one examined in a critical reading that we didn't cover. (There is, for example, additional historically interesting material in *Courting Justice*, and additional contemporary concerns are raised in our *Transgender Rights*

anthology, that we'll have to pass over because the semester is finite. You might approach your court case as an example of a step forward in the securing of some legitimate LGBT rights claim(s), or you might approach your topic the other way around: using a philosophical position to critique what you perceive to be inadequacies in the judicial opinion in the case you've selected. The Lexis Nexis data base (the use of which I will explain a little in class), can be helpful in searching for a promising case to write about (citations in our course readings may also be a good source), and also for finding legal articles commenting on your selected case, or on the same issue(s) in other cases. The final draft is due by class time on the last regular class day of this course, Thursday, April 19th. First drafts are welcome, but I must have them no later than Thursday, April 13th, in order to return them to you by the following Monday, in time to do a rewrite. (Early submission of both drafts and final papers are even more welcome!)

When you begin writing your explication papers, keep the following goals clearly in your mind:

(1) Establish a *thesis* or formulate a *problem*. Straight expository papers are deadly to write and deadly to read. This is an opportunity to think critically and in a little more depth about something related to this course. This is not an exercise in "reporting from the encyclopedia", but an exercise in critical analysis. It requires thought and a little bit of originality on your part.

(2) Formulate an *argument* (or perhaps more than one). Remember, a thesis is a thesis; it is *not* an argument. Alternatively, a problem has to be motivated. With the problem approach, you need to explain why the problem really is a serious one for the author you're engaging, even if you feel you have no ready solution yourself. Either way, you're starting out with some more or less controversial assertion(s), a claim (or claims) which at least some people would dispute. Your job, then, is to *defend* your thesis, to give reasons for believing it, or to *explain* the nature of your problem with the author in question. Either way, this task includes a responsibility to articulate reasons why someone else might take issue with your position – the objections which make your view at least somewhat controversial (and therefore interesting). If you ignore criticisms which you could have anticipated, you're leaving it open to your reader to dismiss your thesis on account of unanswered criticisms. Once you've introduced such objections, you must of course attempt to deal with them somehow: try to explain why they are (or might be) mistaken or misguided in some way.

(3) Do not waste time in your paper rehearsing factual or expository details at great length. Remember that this paper is really quite short, considering the nature of the material with which you'll be dealing. So be judicious about the quantity of straight exposition involved, and proceed quickly to the heart of your concerns. In the same vein, be very judicious about the use of quotations. For the most part, they serve only two useful purposes: (1) textual evidence in support of some surprising or controversial claim; (2) presentation of material for subsequent close textual analysis. In particular avoid using quotations to "write your paper for you." Expressions like "Joe Blow makes the point so much more eloquently than I could," followed by a quotation from Blow, drive me to quiet distraction.

(4) Finally, remember this: your grade will depend on how well you *argue* for or *articulate* the position which you choose to adopt, not on the nature of that position. So don't bother trying to guess where I stand on such and such an issue. It's irrelevant. A thoughtful argument will net you a good grade; derivative regurgitation of someone else's views will not.

Grading:

Quizzes	10%
Exams	20% each (60% total)
Court Decision Critique	20%
Class Participation	10%

Grading Scale:

A	91 or better	C	71-74.9
A-	88-90.9	C-	68-70.9
B+	85-87.9	D+	65-67.9
B	81-84.9	D	61-64.9
B-	78-80.9	D-	58-60.9
C+	75-77.9	F	< 58

Course Outline

1/10 Introduction: The Trials of Oscar Wilde & *Well of Loneliness* Obscenity Trial
(no reading)

Homosexuality in Western Cultural & Religious History

- 1/12 *Sodomy Cases*, Ch. 1, “Homosexuality in Western Culture” (Richards, 5-top 8)
<Nunan, “Catholics & Evangelical Protestants on Homoerotic Desire”>
- 1/17 *Sodomy Cases*, Ch. 1, “Homosexuality in Western Culture” (Richards, 8-10)
<Chauncey, “Christian Brotherhood or Sexual Perversion?”>
- 1/19 *Sodomy Cases*, Ch. 1, “Civil Rights Movement” (Richards, 11-22)
<Katz, *Invention of Heterosexuality*, Vidal’s Forward & Ch 4 “Heterosexual Mystique”>
- 1/24 Minter, “Do Transsexuals Dream of Gay Rights?” (Currah, 141-170)

Queers in the Courts: Early History

- 1/26 *Courting Justice*, Introduction (Murdoch & Price, 1-26)
<Levinson, “The Adultery Clause”>
- 1/31 <Gay Rights Cases–Early History>
Courting Justice, “Ch. 5 “Afflicted with Homosexuality” (Murdoch & Price, 103-132)
- 2/2 *Courting Justice*, “Ch. 6 “Nowhere to Hide” (Murdoch & Price, 135-150)
- 2/7 **EXAM #1**

Privacy Law & Gay Rights

- 2/9 <The Early History of Privacy Law: from *Griswold* to *Roe v. Wade*>
<*Griswold v. Connecticut*>
- 2/14 *Sodomy Cases*, Ch. 2, “Constitutional Right to Privacy: Contraception” (Richards, 35-54)
- 2/16 *Sodomy Cases*, Ch. 3, “Constitutional Right to Privacy: Abortion” (Richards, 55-71)
- 2/21 <*Loving v Virginia*>
<*Baker v. Nelson*>
Courting Justice, “Ch. 7 “Nothing to Hide”, Part I (Murdoch & Price, 163-173)

2/23 *Courting Justice*, “Ch. 7 “Nothing to Hide”, Part II (Murdoch & Price, 173-184)

Queers in the Courts: Recent History

2/28 *Courting Justice*, “Ch. 5 “The Chess Master Makes His Move” I (Murdoch & Price, 237-251)

3/1 *Courting Justice*, “The Chess Master Makes His Move” II (Murdoch & Price, 251-270)

3/6 & 3/8 Spring Break

3/13 “Adrift in a Sea of Gay Clerks” (Murdoch & Price, 271-290)
Sodomy Cases, Ch. 5, “*Bowers v. Hardwick*” (Richards, 85-92)

3/15 <*Bowers v. Hardwick*>
Sodomy Cases, Ch. 5, “*Bowers v. Hardwick*” (Richards, bottom 92-107)
“Branded Second-Class Citizens” (Murdoch & Price, 330-345)

3/20 **EXAM #2**

Gay Rights post-*Bowers v. Hardwick*

3/22 *Courting Justice*, “Branded Second-Class Citizens” (Murdoch & Price, 345-354)
Courting Justice, “Turning a Major Corner”(Murdoch & Price, 439-442)
<*Bottoms v. Bottoms*>

3/27 *Courting Justice*, “Constitution Neither Knows nor Tolerates Classes Among Citizens”
(Murdoch & Price, 451-482)

3/29 *Sodomy Cases*, Ch. 7, “*Lawrence v. Texas*: Background, etc.” (Richards, 122-145)

4/3 <*Lawrence v. Texas*>
Sodomy Cases, Ch. 8, “*Lawrence v. Texas*: Opinions of Court” (Richards, 146-156)
Sodomy Cases, Ch. 9, “After *Lawrence*: Decriminalization Other...” (Richards, 157-167)

4/5 *No class*

4/10 *Sodomy Cases*, Ch. 9, “After *Lawrence*: Same-Sex Marriage...” (Richards, 167-176)
<Nunan, “*The Story So Far on Same-Sex Marriage*”>

Transgender & Intersex Rights

4/12 Currah, “Gender Pluralisms under the Transgender Umbrella” (Currah, 3-31)

4/13 Flynn, “The Ties That (Don’t) Bind: Transgender Family Law” (Currah, 32-50)

4/17 Greenberg, “Road Less Travelled: Problem with Binary Sex Categories” (Currah, 51-73)

4/19 Holmes, “Intersex Children and the Columbian Constitutional Court” (Currah, 102-121)

4/26 **Exam #3** (Thursday, 8:00-11:00)