

LEGAL STUDIES 107: THEORIES OF JUSTICE FALL 2012

Lectures: Tuesdays & Thursdays, 2:00-3:30, 160 Kroeber
Instructor: Professor Sarah Song (ssong@law.berkeley.edu)
Office hours: Tuesdays 3:30-5:00pm, or by appointment

GSIs: Ms. Katie Heard (kathryn.heard@berkeley.edu)
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Course description:

It is commonly said that justice requires giving people what they are due, but what are people due? Can a just society ensure both liberty and equality, or are these opposing political values? How would a just society distribute the goods that we all need, such as rights and liberties, opportunities, income and wealth, and offices and honors? In this course, we will pursue these questions through the lens of four different theories: utilitarianism, libertarianism, egalitarian liberalism, and Marxism. To assess the strengths and weaknesses of these theories, we will discuss their implications for some of the most pressing issues of our day, including legal regulation of sexual conduct, religious exemptions from generally applicable law, labor market regulations, gestational surrogacy, immigration, global justice, affirmative action, and same-sex marriage.

Course books:

John Stuart Mill, *Utilitarianism* (Hackett, 2002)
John Stuart Mill, *On Liberty* (Hackett, 1978)
Robert Nozick, *Anarchy, State, and Utopia* (Basic Books, 1974)
John Rawls, *A Theory of Justice* (Belknap Press, [1971] 2005 orig. ed.)

The four course books are available for purchase at the Cal Bookstore. A few copies of each book are also on reserve at Moffit Library. All other readings are in the Course Reader, which are available for purchase at Copy Central on Bancroft.

Course requirements and grading:

Your course grade will be based on four components:

Paper #1 (4-5 pages)	20%	Due on <u>Tue, Sep 20</u>
Paper #2 (4-5 pages)	30%	Due on <u>Thu, Oct 25</u>
Final Exam	30%	<u>Tue, Dec 11, 8-11am</u>
Attendance, participation, & short writing assignments	20%	

Attendance and participation:

Your attendance in both *lecture* and *section* is required. Your GSI will take attendance by distributing sign-in sheets. Unexcused absences will count against your grade. If you have to miss a lecture or section, please notify your GSI in advance. The lectures will explain the main ideas and arguments from the readings. There will be time during every lecture for Q&A and discussion. You will have the opportunity to discuss the issues in greater depth in section.

You should complete the reading assignments for each lecture *in advance*. You will understand the lectures better if you do the readings in advance. Before you start reading, look over the Study Questions and try to answer them as you do the readings. Some of the readings are quite dense and complex, so you may need to re-read the texts for comprehension. Do not wait until the last minute to complete the readings! Please bring the assigned reading to every lecture and section meeting.

No electronic devices in class:

This includes laptops, cell phones, ipads, kindles, ipods, and the like. To minimize distractions, I ask that you take notes the old-fashioned way, with pen and paper. Think of the lectures and sections for this class as an opportunity to be offline and *think uninterrupted!* If this policy poses a problem for you, please speak with Professor Song.

Paper deadlines:

Paper topics will be distributed two weeks in advance of the due date. Your GSIs and I will discuss the paper topics with you when we distribute them. The first paper is due on Tuesday, September 20, in lecture. The second paper is due on Thursday, October 25, in lecture.

Paper length and format:

Both the first and second paper should be no longer than 5 pages. You must use 1-inch margins (top, bottom, left, & right), 12 point Times New Roman font, and double-spaced line spacing.

For help with writing:

If you have further questions about the papers, please speak with your GSI. For additional help with writing, please visit the *Student Learning Center*, which offers tutoring and workshops. They have drop-in tutoring hours where you can get help with your writing at any point in the writing process.

Policy on late papers:

If you expect that you will need additional time to write your paper, you must ask your GSI *at least one week in advance* of the due date. If your paper is late and you have not received an extension from your GSI, the final grade of your paper will be reduced by one letter grade for every day your paper is late.

Policy on plagiarism and cheating:

Plagiarism is the presentation of another's words and ideas as your own without attributing the proper source. Plagiarism includes buying or obtaining papers from others, which you then present as your own work. Plagiarism also includes copying material from the internet, books, journals, and other materials without citing the source. Any material taken word-for-word from another source must be placed in quotation marks and properly cited. You can use ideas and information from other authors without directly quoting from them (i.e. paraphrasing), but you must acknowledge them in your footnotes or parenthetical documentation. Any student caught plagiarizing will receive an F for the assignment and possibly for the course, and the matter will be referred to the U.C. Berkeley Office of Student Conduct for disciplinary action. Do not hesitate to ask me or your GSIs if you are unclear about what constitutes plagiarism. Plagiarism is not only wrong but it also robs you of the opportunity to really work on your writing!

Cheating is another form of academic dishonesty. An example of cheating is copying another student's work or using notes or books during a closed-book final exam. Anyone caught cheating on the final exam will receive an F for the final and possibly for the class.

Special accommodations:

If you need special accommodations for the final exam or any other aspect of the course, please let your GSI or me know as soon as possible. We will work with the Disabled Students' Program to make the necessary accommodations.

SCHEDULE AND READING ASSIGNMENTS
(Please remember to bring the assigned text to every lecture and section.)

Aug 23. Introduction: What is justice & why should we study it?

Aug 28. Law, Morality, and Justice

Reading: (1) Plato, *Crito* (excerpt); (2) Ursula Le Guin, “The Ones Who Walk Away from Omelas.”

Study Questions: (1) The requirements of man-made or *positive law* may conflict with principles of justice, what some call *higher moral law*. In the *Crito*, Socrates concludes that he must obey Athenian law and accept his death sentence even though he seems to think the sentence is unjust. Should a person obey an unjust law? Why or why not? (2) Is it ever right to sacrifice a single person or a minority of people for the good of the majority? Ursula Le Guin’s story asks what price can be paid for an idyllic life. What do you think of those who remain in Omelas and those who choose to leave? Would you walk away from Omelas?

I. UTILITARIANISM

Aug 30. Hedonistic Utilitarianism

Reading: (1) Jeremy Bentham, *Introduction to the Principles of Morals & Legislation*, ch. 1, 4, 13, 17 (sec. 1); (2) *R. v. Dudley & Stephens* (1884).

Study Questions: (1) What is Bentham’s “principle of utility” or “greatest happiness principle”? (2) Bentham says that pleasure is the only thing that is good in itself. Is he right? What about knowledge? Or beauty? Or achieving the aims you set for yourself? (3) How could Bentham make a utilitarian case against slavery or against punishing the innocent? Consider three cases: (i) the slave population is small; (ii) the slaves are members of a socially outcast group; (iii) the slaves are paid little, do backbreaking work, and are very productive. (4) In Bentham’s view, should a community enforce its public morals through legal sanctions? Why or why not? (5) The case *R. v. Dudley & Stephens* compels us to consider whether it is ever justifiable to sacrifice one person so that a greater number may survive. Do you think the legal ruling in this case was just or unjust? What would Bentham say about the case?

Sep 4. The Legal Enforcement of Public Morality: The case of anti-sodomy laws

Reading: (1) H.L.A. Hart, “Immorality and Treason” (1959); (2) Patrick Devlin, “The Enforcement of Morals” (1965); (3) *Lawrence v. Texas* (2003), Opinion of the Court and Justice Scalia’s dissent.

Study Questions: (1) Does the fact that sodomy violates the community’s morals (assuming that it does) provide a legitimate reason for criminalizing it? (2) If the majority of people in a society find a practice morally offensive and their views define the community’s sense of morals, should the majority’s views prevail? Why or why not? (3) Utilitarians, including Bentham and Mill, have explicitly condemned the legal enforcement of morals, but can utilitarian principles really provide a case against the legal enforcement of morals? (4) Are there reasons for opposing the legal enforcement of morals that strike you as more convincing than the utilitarian argument?

Sep 6. A More Refined Utilitarianism: Distinguishing higher and lower pleasures

Reading: John Stuart Mill, *Utilitarianism*, chs. 1-2, 5.

Study Questions: (1) How does Mill distinguish between higher and lower quality pleasures? What does it mean to say that the quality of a pleasure is higher? (2) Is Mill right about the kinds of pleasures that those “competent” to judge would prefer? What sorts of people are “competent” to judge the quality of pleasures and the goodness of lives? (3) Does Mill’s higher/lower distinction reflect an objectionable kind of elitism or an undue emphasis on intellectual pleasures? (4) Do you agree with Mill that it is better “to be Socrates dissatisfied than a fool satisfied”?

Sep 11. Reconciling Individual Liberty with Utilitarian Philosophy

Reading: John Stuart Mill, *On Liberty*, ch. 1-3, 5.

Study Questions: (1) Mill says that *On Liberty* defends “one very simple principle.” What is it? (2) What would Mill say about legal restrictions on racist hate speech? On pornography? (3) How does Mill argue for his “simple principle” on utilitarian grounds? How is the general welfare improved by tolerating religious, philosophical, and moral dissent? What are the costs of such toleration? Does he think the benefits of tolerating dissent outweigh the costs? (4) Do you think that conduct ought only to be regulated if it is *harmful* to others? Do you think it is right to regulate conduct out of a concern for the person’s own welfare (e.g. seat belt laws), or because it is repulsive (e.g. bestiality), or because it is offensive to others (e.g. public nudity), or because it is judged to be wrong (e.g. suicide, physician-assisted suicide)?

Sep 13. No lecture (Prof. Song out of town)Sep 18. Free Exercise and Religious Accommodations

Reading: (1) *Sherbert v. Verner* (1963), Opinion of the Court; (2) *Employment Division v. Smith* (1990), Opinion of the Court.

Study Questions: (1) Suppose exemptions from generally applicable laws are granted to religious individuals. Do such exemptions threaten anarchy or lawlessness? (2) Do exemptions amount to favoritism or state establishment of religion? (3) Do you think there ought to be exemptions of the sort at issue in *Sherbert* or *Smith*? Should there be cultural (as opposed to strictly religious) exemptions as well? Can you think of non-religious cultural examples? (4) Is there a compelling utilitarian case in favor of religious exemptions? Does Bentham or Mill’s utilitarianism provide a good way to capture the nature of the burden on religious liberty when no exemptions are granted?

*** Paper #1 Due: Tuesday, Sep 20 (please submit your paper to your GSI in lecture)**

II. LIBERTARIANISM

Sep 20. Locke on the right to private property

Reading: John Locke, *Second Treatise on Government*, ch. 5.

Study Questions: (1) What is the relationship between human labor and private property in Locke's view? (2) Do you agree with Locke that most of the value of an appropriated thing (e.g. cultivated piece of land) is due to human labor? (3) What moral constraints does Locke impose on the acquisition of private property?

Sep 25. Possessive Libertarianism I: Defending a minimal state

Reading: Robert Nozick, *Anarchy, State, & Utopia*, pp. xi-xiv, ch. 2, ch. 3, pp. 113-119 of ch. 5.

Study Questions: (1) What is a "minimal state"? Do you think Nozick provides a plausible story of how the state could emerge in a morally permissible way, without violating anyone's rights? (2) Nozick thinks about individual rights as "side constraints" (p. 30). What is this idea? (3) Nozick criticizes utilitarianism for its inability to deal with "utility monsters." What are they? Do you agree that Bentham and Mill's utilitarian theories cannot address this problem? (4) How does Nozick address the problem of the individual anarchist or "independent" who initially refuses to accept the protective services of the state?

Sep 27. Possessive Libertarianism II: Nozick's historical "entitlement theory" of justice

Reading: Nozick, *Anarchy, State, & Utopia*, pp. 149-64 & pp. 167-82 of ch. 7; pp. 232-8 of ch. 8.

Study Questions: (1) What are the three principles that make up Nozick's theory of justice? (2) What is the difference between "historical" and "end-state" principles of justice? Which type of theory is Nozick's? (3) Riffing on Marx, Nozick sums up his theory with the following maxim: "From each as they choose, to each as they are chosen." In prizing individual choice and liberty above all, what, if anything, does his theory fail to account for? (4) Nozick famously said, "Taxation of earnings from labor is on a par with forced labor" (p. 169). Do you see any differences between taxing someone's earnings and forcing someone to labor? Are these differences morally significant?

Oct 2. Liberty and Labor Market Regulation

Reading: (1) *Lochner v. New York* (1905), Opinion of the Court & Justice Holmes's dissent; (2) *West Coast Hotel v. Parrish* (1937), Opinion of the Court.

Study Questions: (1) Why does the *Lochner* Court think it is illegitimate for the state to regulate labor markets in order to redress inequalities of bargaining power between employers and employees? What are the implications of such inequalities for wages and working conditions? (2) Is it paternalistic to try to correct for inequalities of bargaining power? Do such regulations make workers "wards of the state"? Is it also paternalistic to protect a person from physical assault? (3) Are minimum wage laws or workplace health and safety regulations objectionably paternalistic? What is wrong with paternalism? (4) What would Nozick say about *Lochner*?

Oct 4. The Ethics of Surrogacy

Reading: (1) Appendix A, B, & C (excerpt from *Sacred Bond: The Legacy of Baby M*); (2) “In the Matter of Baby M” (1987); (3) “In the Matter of Baby M” (1988); (4) Elizabeth Anderson, “Is Women’s Labor a Commodity?”

Study Questions: (1) Should surrogacy contracts – when someone pays a woman to become pregnant and bear a child and turn the child over at birth – be permitted? Why or why not? (2) Does your position on gestational surrogacy challenge or support utilitarian or libertarian assumptions? (3) Do you think there are other things (e.g. organs, sex, persons, military service) that should never be bought and sold? What is the moral basis of your reasoning?

III. EGALITARIAN LIBERALISMOct 9. Reconciling Liberty and Equality: Justice as Fairness

Reading: John Rawls, *A Theory of Justice*, Sections 1-5, 11-14.

Study Questions: (1) What, according to Rawls, is the role of a conception of justice? Why do we need a theory of justice in the first place? (2) Following Locke, Rousseau, and Kant, Rawls’s approach to justice is to imagine a social contract in which individuals come together to choose the basic principles that will govern their society. Is the idea of a hypothetical social contract a good way to think about justice? Why or why not? (3) In criticizing utilitarianism in sect. 5, Rawls concludes, “Utilitarianism does not take seriously the distinction between persons” (p. 27). What does he mean by this? (4) Which liberties does Rawls include as “basic liberties” (see sect. 11)? (5) In sect. 12-13, Rawls provides an informal argument for his second principle of justice and the *difference principle* in particular. He lays out three interpretations of his second principle of justice, which states, “Social and economic inequalities are to be arranged so that they are (a) reasonably expected to be to *everyone’s advantage*, and (b) attached to positions and offices *open to all*” (p. 60). He argues that “democratic equality” (embodied in his difference principle) is the best interpretation in contrast to the systems of “natural liberty” and “liberal equality.” What are the differences between these three systems? Do you agree with Rawls? (6) In sect. 14, Rawls says his principle of fair equality of opportunity is an example of “pure procedural justice.” What is this? How does it differ from “perfect” and “imperfect” procedural justice?

Oct 11. The Social Contract Argument for Justice as Fairness, or Why the Parties in the Original Position Would Choose Rawls over Mill or Nozick

Reading: Rawls, *A Theory of Justice*, Sections 20-26, 29.

Study Questions: (1) In sect. 22, Rawls discusses the “circumstances of justice.” What are they? What role do they play in his theory? (2) In sect. 24, Rawls discusses the “veil of ignorance.” What kind of information is blocked by the veil? (3) Rawls says that parties to the original position are rational and mutually disinterested. What does this mean? (4) Rawls argues that the individuals inside the “original position” would choose his two principles of justice over utilitarianism and libertarianism. Study Rawls’s more systematic argument for his principles in sect. 26 & 29. Accepting the constraints of the original position, do you agree that his principles would be chosen inside the original position? (5) What, if anything, justifies the original position?

Oct 16. Moral Desert: Do we deserve our talents and the fruits of our talents? (Guest lecture)

Reading: (1) Rawls, *Theory of Justice*, re-read sect. 12 and read sect. 17 & pp. 310-15 of sect. 48; (2) Nozick, *Anarchy, State, & Utopia*, pp. 213-231.

Study Questions: (1) In sect. 12, in criticizing the system of “natural liberty” Rawls says, “Intuitively, the most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view.” (p. 72) What factors is he talking about? Do you agree they are morally arbitrary? (2) Rawls says “the difference principle represents, in effect, an agreement to regard the distribution of natural talents as *a common asset* and to share in the benefits of this distribution whatever it turns out to be.” (p. 102) What are the implications of viewing talents as a common asset? (3) Rawls argues that “no one deserves his place in the distribution of native endowments, any more than one deserves one’s initial starting place in society.” (p. 104) If distributive justice is not about rewarding moral desert, what about people who work hard and play by the rules? Do they have no moral claim on the rewards they receive for their efforts? (See Rawls’s distinction between “moral desert” and “entitlements to legitimate expectations” in sect. 48.) (4) How does Nozick respond to Rawls’s argument?

Oct 18. No lecture – Prof. Song out of town.Oct 23. Justice and Gender I: Liberal Feminism

Reading: Susan Moller Okin, *Justice, Gender, and the Family*, ch. 1, 5, 8

Study Questions: (1) What do you think Okin means when she says that the family is “the linchpin of gender”? Do you agree? (2) Okin criticizes Rawls’s theory of justice for being insufficiently attentive to sex and gender. How exactly is Rawls’s theory guilty of “blindness to sexism”? (3) Feminists have long criticized the distinction between public and private. What is this distinction and why is it a problem? (4) Rather than rejecting Rawls’s theory, Okin seeks to revise it in support of the goal of gender equality. What revisions does she call for? Do the revisions adequately respond to Okin’s criticisms of Rawls? (5) Okin argues for “minimizing” gender and for its eventual “disappearance.” Is this a desirable goal? What sorts of policies would get us there?

*** Paper #2 Due: Thursday, Oct 25 (please submit your paper to your GSI in lecture)**Oct 25. Justice and Gender II: Feminism as Resistance to Male Dominance

Reading: Catherine MacKinnon, “Reflections on Sex Equality under Law,” from *Women’s Lives, Men’s Laws* (2005), p. 116-27. Please also read the footnotes on pp. 411-21 as they provide examples of important cases in recent sex equality jurisprudence.

Study Questions: (1) MacKinnon describes the first legal attempts to improve women’s status in American society as demands for “women’s inclusion on the same terms as men” (p. 119). Some scholars refer to this approach as “equality as sameness/difference.” What is the problem with this approach in MacKinnon’s view? (2) What are the differences & similarities in judicial interpretations of *sex* equality and *race* equality? (3) MacKinnon advocates another approach, what she calls “women’s resistance to male dominance” (p. 124). How is this approach different from “equality as sameness/difference”? Do you agree with MacKinnon that hers is the better approach? Think about what the two approaches would say about specific issues (e.g. pregnancy, sex harassment, abortion)? (4) Are you a feminist? Do we still need feminism?

Oct 30. A Pluralistic Approach to Egalitarian Justice: Complex Equality

Reading: Michael Walzer, *Spheres of Justice* (1983), chs. 1 & 3.

Study Questions: (1) Walzer proposes a pluralistic theory of justice: “different social goods ought to be distributed for different reasons, in accordance with different procedures, and by different agents” (p. 6). What do you make of this pluralistic approach? (2) Walzer says that the distribution of any social good is “just or unjust relative to the social meanings of the goods at stake” (p. 9). Are there any problems with this kind of relativism? (3) What makes Walzer’s conception of equality “complex”? (4) Walzer outlines three different principles for distributing social goods (free exchange, desert, and need). Think of examples of different goods that should be distributed according to each of these principles. (5) What sort of communal provision is appropriate for a society like the U.S.? How should health care be distributed?

Nov 1. Membership in a Political Community: Another Distributive Good?

Reading: Walzer, *Spheres of Justice*, ch. 2 on “Membership.”

Study Questions: (1) Does it make sense to think of *membership* in a political community as a “primary good that we distribute to one another” (p. 31)? What do we gain by thinking of membership in this way? (2) How does Walzer defend a political community’s right to control immigration? (3) Walzer argues that a state’s right to control immigration is not unlimited. What moral constraints are there on how a liberal democratic state treats noncitizens *within* its territory? What about noncitizens *outside* the national territory? Can democratic states admit or exclude whomever they want if that is what the majority of its citizens want?

Nov 6. Immigration

Reading: Joseph Carens, “Aliens and Citizens: The Case for Open Borders,” *Review of Politics*, vol. 49, no. 2 (1987), pp. 251-73.

Study Questions: (1) Carens argues that the basic premises of utilitarianism, libertarianism, and egalitarian liberalism all support a policy of open borders? Do you agree? (2) On what grounds, if any, do you think immigration should be restricted? To preserve a national culture? To protect the employment opportunities of native workers? To enable democratic politics? (3) Assume that the benefits of immigration outweigh the costs for both immigrants and the citizens of the host society. Should immigration still be restricted? Why? What sorts of restrictions would be justifiable? (4) Review Walzer’s chapter on “membership.” How does Carens’s views on immigration differ from Walzer’s?

IV. A MORE RADICAL EGALITARIANISM: MARXISM

Nov 8. Marx on Alienation

Reading: Karl Marx, *Economic & Philosophic Manuscripts of 1844* (excerpt from *The Marx-Engels Reader*, pp. 70-93).

Study Questions: (1) What are the different forms of alienation under capitalism? (2) What is the relationship between alienated labor and private property? (3) How, according to Marx, would a communist society eliminate alienation?

Nov 13. Marx on Capitalism, Exploitation, and Freedom

Reading: Marx, *Capital* (excerpt from *The Marx-Engels Reader*, pp. 329-43, 361-84).

Study Questions: (1) In this work, Marx provides the political economy behind the moral arguments of the *1844 Manuscripts*. How does Marx define the following terms: commodity, use-value, and exchange-value? (2) Labor-power is a commodity; unlike all other commodities, labor-power creates exchange-value. This unique feature of labor-power explains the source of profits in a capitalist system. What is the relationship between the exchange value of a product and the “socially necessary” labor time to produce it? (3) What is exploitation, and how does Marx calculate the rate of exploitation? (4) What about domestic/household labor? Does Marx account for the labor of a worker’s spouse or domestic partner to what he produces? (5) How would you characterize Marx’s ideal of freedom? How does it differ from the libertarian or the egalitarian liberal views of freedom?

V. CONCLUDING TOPICS

Nov 15. Global Justice

(N.B. this is a change from what’s listed in the Course Reader table of contents page; we’ll discuss global justice and the Young reading first and then watch the film *China Blue*)

Reading: Iris Marion Young, “Responsibility and Global Labor Justice” (2004).

Study Questions: (1) Young argues that people in “relatively free and affluent countries” such as the U.S. “have responsibilities to try to improve working conditions and wages of workers in far-off parts of the world” (365). She bases her argument on the ideal of “political responsibility.” What does this ideal require of us? How is the “political responsibility” model different from what she calls the “liability model”? (2) How would Young respond to the person who says: “I haven’t harmed the citizens of poor countries nor did I cause their poverty, so I don’t have any responsibilities to do anything to assist them. I can assist them as a matter of charity if I want to, but I’m not, as a matter of duty, required to do so.” (3) Think about the Young reading when you watch the film *China Blue*.

Nov 20. Film: *China Blue*

No reading.

Nov 27. Affirmative Action

Reading:

- (1) *Grutter v. Bollinger* (2003), Opinion of the Court & Justice Thomas's dissent;
- (2) Ronald Dworkin, "Bakke's Case: Are Quotas Unfair?";
- (3) Michael Brus, "Proxy War: Liberals Denounce Racial Profiling. Conservatives Denounce Affirmative Action. What's the Difference?"

[The second two readings are excerpted from *Justice: A Reader*, ed. Michael J. Sandel (Oxford: Oxford University Press, 2007).]

Study Questions: (1) Are all uses of racial classifications on a par and equally objectionable? Is it just as objectionable to have an affirmative action program that benefits a minority as to have a program that benefits the racial majority? (2) What is the value of *diversity*? Why does the majority of the Court in *Grutter* think it is so important? Do you think diversity is an important value? (3) Do you think the diversity rationale is the strongest rationale in support of affirmative action? What about the argument about remedying the persisting effects of racial discrimination? (4) Can you think of means other than affirmative action programs for promoting equal educational opportunities for underrepresented groups? (5) Do affirmative action programs undertaken to promote racial diversity in universities rest on objectionable stereotypes or reinforce racial divisions, as Justice Thomas suggests?

Nov 29: Same-Sex Marriage

Reading:

- (1) *Loving v. Virginia* excerpt (1967);
- (2) re-read *Lawrence v. Texas* (2003);
- (3) *Perry v. Schwarzenegger* excerpt (2010);
- (4) Prop 8 (1 page);
- (5) Katherine Franke, "Longing for *Loving*" (2008);
- (6) Michael Kinsley, "Abolish Marriage" (2003).

Study Questions: (1) On what legal grounds was the ban on interracial marriage struck down? (2) On what legal grounds was the ban on same-sex sodomy struck down? What value(s) did the Court seek to protect in *Lawrence*? (3) What reasons does Judge Walker give for striking down Prop 8 in *Perry*? (4) Is *Perry* more like *Loving* or *Lawrence*? While Franke supports the movement for marriage equality, she is critical of the normatively superior status that married people enjoy. What is behind Franke's concern? (5) Recall that utilitarian philosophers like Bentham and Mill opposed the legal enforcement of morality, which suggests that they might oppose legal bans on sodomy or other sexual behavior. What might they say about same-sex marriage, which is not a "private" behavior but public institution created and supported by the state?

*** Final Exam: Tuesday, December 11, 8:00-11:00am.**