

PHIL 608B: Risk

Spring 2017

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Office Hours: 2:00 – 4:00 PM Mondays, and by appointment

Course Description

The course will consider the morality of risk, focusing on matters that pertain to political and legal philosophy. In one sense, risk appears appropriately centerpiece to political theory. Actual decisions about policy and institutional arrangements must be conducted in terms of their probable effect on interests, and in the dangerous world of scarce resources, we must determine which risks to bear and which to mitigate (i.e., the presence of risk is unavoidable, though its character is an object of social control). Moral philosophy, however, has only lately taken a serious interest in risk, perhaps partly because the more consequentialist the theory, the less there would seem to be anything particularly interesting to say about it. When considering risk (the consequentialist roughly holds), we simply conduct the relevant cost/benefit analysis in terms of expected rather than known values. Nonetheless, recent theory indicates some puzzles. For instance, both in practice and in our judgment we evaluate qualitatively identical actions (in terms of the dangers they pose) differently based on their outcomes (just consider the difference between attempted murder and murder, or harmless negligence and negligence harming your neighbor). Also, if we are to take the separateness of persons seriously, what does this say about permissible risk-taking in a highly non-ideal social world? How does it constrain cost-benefit decisions, and can it inform political decision? Perhaps we have a right against others' dangerous conduct, but it must be limited, as anything we do creates some danger for others. Moreover, the background circumstances likely already subject some to inequitable levels of danger, so we need a sense of how that matters prospectively. The course, then, will focus on theoretically basic issues of what we owe each other in political life, the nature of contractualism, the grounds of criminal and corrective liability, and the idea of responsibility, as these matters relate to non-ideal political and legal decision.

Objectives

Students will:

- Be familiar with some of the central recent philosophical work on risk, rights and contractualism

- Be able to explicate the basic concerns that have driven theorists to write on the morality of risk
- Develop and be able to articulate cogent and defensible views on these topics
- Improve ability to write analytical papers
- Develop an ability to read and critically consider difficult texts
- Improve ability to reason through and intelligently discuss complex philosophical problems generally

Readings

As a graduate seminar, there will be a focus on in-class discussion rather than lecture. Careful and reflective reading of the texts prior to our meetings, then, is essential. The large majority of readings will be available on electronic reserves. The only exceptions are those from the one text for purchase:

Larry Alexander and Kimberly Ferzan, *Crime and Culpability: A Theory of Criminal Law* (Cambridge, 2009)

Requirements

Grade Breakdown:

Paper	60%
Participation	20%
Presentation	20%

Participation: Regular and informed participation on the part of everyone is essential. A part of your grade will be based on your contributions in seminar: the grade will be based on the frequency and quality of your verbal contributions to the class. Such contributions include informed responses to my questions, participation in classroom discussions, responding to your peers, and raising relevant and cogent questions.

Presentation: Each student will present on some aspect of an assigned reading for the course. The presentation should contextualize some important line of reasoning (what is the theoretical point of the argument, and how does it relate to other related positions), explicate the line of reasoning, offer a critical assessment of some aspect of the author's position, and coordinate the in class discussion surrounding the presentation. The presentation should take between fifteen and twenty five minutes.

Paper: The paper assignment is a two stage process. Stage One is writing the best 15 to 20 page draft you are able. I will then provide you with feedback on your draft. Stage Two is revising the draft to produce the best final draft you are able.

Course Policies

Attendance: Attendance in class is mandatory. Each unexcused absence beyond one will result in a 1/3 letter grade reduction in the final grade.

Academic Honesty: Plagiarism and other forms of academic misconduct will be dealt with harshly in accordance with SPEL policies. At minimum, the student would fail the course. See the SPEL Handbook for a description of official policy.

Papers Drafts: Drafts are to be submitted electronically, by email. When I receive a paper draft, I will confirm with an email.

Schedule of Readings

The following plan is subject to revision – I will let you know of any changes as we go. Listed on the left are the dates of the meetings, on the right are the readings that will be discussed on those dates. Items marked [ER] are available on Blackboard.

Date	Reading
Jan. 18	Introductory Meeting
Jan. 25	<ol style="list-style-type: none"> 1. George Fletcher, “Fairness and Utility in Tort Theory” <i>Harvard Law Review</i> 85 (1972), 537-573 2. Robert Nozick, selections <i>Anarchy, State, and Utopia</i> (1974), 73-84 3. Judith Jarvis Thomson, “Imposing Risks” in <i>Rights, Restitution, & Risk</i> (1986), 173-191
Feb. 1	<ol style="list-style-type: none"> 1. Dennis McKerlie, “Risk and Rights” <i>Canadian Journal of Philosophy</i> (1986), 239-251 2. Peter Railton, “Locke, Stock, and Peril: Natural Property Rights, Pollution, and Risk” (1985) 3. David McCarthy, “Liability and Risk” <i>Philosophy & Public Affairs</i> 25 (1996), 238-262
Feb. 8	<ol style="list-style-type: none"> 1. David McCarthy, “Rights, Explanation, and Risks” <i>Ethics</i> 107 (1997), 205-225 2. Stephen Perry, “Loss, Agency, and Responsibility for Outcomes” in <i>Tort Theory</i> (1993), 40-47 3. Stephen Perry, “Risk, Harm, and Responsibility” in <i>Philosophical Foundations of Tort Law</i> (1995), 321-346 4. Stephen Perry, “Responsibility for Outcomes, Risk, and the Law of Torts” in <i>Philosophy and the Law of Torts</i> (2001), 72-120
Feb. 15	<ol style="list-style-type: none"> 1. John Oberdiek, “Towards a Right Against Risking” <i>Law and Philosophy</i> (2009), 367-392

	<ol style="list-style-type: none"> 2. Stephen Perry, "Torts, Rights, and Risk" in <i>Philosophical Foundations of the Law of Torts</i> (2014), 38-64 3. Thomas Nagel, "Equality" <i>Mortal Questions</i> (1979), 106-127
Feb. 22	<ol style="list-style-type: none"> 1. John Rawls, <i>A Theory of Justice</i>, 1-24 2. John Rawls, <i>Justice as Fairness: A Restatement</i> (2001), 14-24, 80-94 3. T.M. Scanlon, <i>What We Owe Each Other</i> (1998), 189-247
Mar. 1	<ol style="list-style-type: none"> 1. Sophia Reibentanz Moreau, "Contractualism and Aggregation" <i>Ethics</i> 108 (1998), 296-311 2. Elizabeth Ashford, "The Demandingness of Scanlon's Contractualism" <i>Ethics</i> 113 (2003), 273-302 3. James Lenman, "Contractualism and Risk Imposition" <i>Politics, Philosophy, & Economics</i> (2008), 99 – 122
Mar. 8	<ol style="list-style-type: none"> 1. Barbara Fried, "Can Contractualism Save Us from Aggregation?" <i>Journal of Ethics</i> (2012), 39-66 2. Aaron James, "Contractualism's (Not So) Slippery Slope" <i>Legal Theory</i> (2012), 232-292 <p><u>Recommended:</u> Barbara Fried, "The Limits of a Non-Consequentialist Approach to Torts" <i>Legal Theory</i> (2012), 231-262</p>
Mar. 15	<ol style="list-style-type: none"> 1. Christopher Morgan-Knapp, "Nonconsequentialist Precaution" <i>Ethical Theory and Moral Practice</i> (2015), 785-797 2. Sune Holm, "A Right against Risk-Imposition and the Problem of Paralysis," <i>Ethical Theory and Moral Practice</i> (2016), 917-930 3. Rahul Kumar, "Risking and Wronging" <i>Philosophy & Public Affairs</i> (2015), 27-49
Mar. 22	<ol style="list-style-type: none"> 1. S.D. John, "Risk, Contractualism, and Rose's 'Prevention Paradox'" <i>Social Theory and Practice</i> (2014), 28-50 2. Tony Reeves, "Standard Threats: How to Violate Basic Human Rights" <i>Social Theory and Practice</i> (2015), 403-434 3. Maria Feretti, "Risk Imposition and Freedom" <i>Politics, Philosophy & Economics</i> (2016), 261-279
Mar. 29	<ol style="list-style-type: none"> 1. Johann Frick, "Contractualism and Social Risk" <i>Philosophy & Public Affairs</i> (2015), 175-223 2. Adriana Placani, "When the Risk of Harm Harms" <i>Law and Philosophy</i> (2017) 77-100
Apr. 5	<ol style="list-style-type: none"> 1. Colleen Murphy and Paolo Gardoni, "The Acceptability and the Tolerability of Societal Risks: A Capabilities-Based Approach" <i>Science and Engineering Ethics</i> (2008), 77-92 2. Colleen Murphy and Paolo Gardoni, "Evaluating the Source of the Risks Associated with Natural Events" <i>Res Publica</i> (2011), 125-140 3. Larry Alexander and Kimberly Ferzan, <i>Crime and Culpability</i>, 1-41
Apr. 19	<ol style="list-style-type: none"> 1. Alexander/Ferzan, <i>Crime and Culpability</i>, 41-134
Apr. 26	<ol style="list-style-type: none"> 1. Alexander/Ferzan, <i>Crime and Culpability</i>, 134-225 2. David Lewis, "The Punishment that Leaves Something to Chance" <i>Philosophy & Public Affairs</i> (1989) 53-67
May 3	<ol style="list-style-type: none"> 1. Alexander/Ferzan, <i>Crime and Culpability</i>, 226-324