



JUDGEMENT

**Course Materials
Fall 2004**

Professor Jennifer Nedelsky

**Faculty of Law
University of Toronto**

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the Faculty of Law, University of Toronto**

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UNIVERSITY OF TORONTO

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JUDGEMENT SEMINAR

POL 2032H1; LAW 372H1F

FALL 2004

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This course explores the nature of the human faculty of judgement. We will be looking at the connections and differences between the judgements we make every day (is it a good course, book, movie) and moral, political and legal judgements.

There are two different kinds of problems our exploration will try to address. The first arises out of feminist theory, critical legal theory and a variety of other contemporary approaches to law. In all of these approaches that has been an emphasis on the importance of recognizing the multiplicity of different "voices" in our diverse society. Our legal system, like all of our institutions, has presupposed an unitary framework of discourse to which all who want to participate must conform. The call to recognize difference and make it possible to everyone's voice to be heard is a positive move. But it poses problems that are still to be worked out. A judge can adjudicate between two sides of a story when the story has a recognizable unity, that is when both sides have fit into a common framework. But if we no longer try to force diverse perspectives into the dominant framework, judges will be faces with truly incommensurable stories. (This already sometimes happens in cases of rape, sexual harassment and "hate speech.") How are we to judge between them? A related question arise with respect to the conventional virtues of judicial judgment: neutrality, impartiality, objectivity. What becomes of these virtues, how do we need to reconceptualize them, when we recognize the role of passion in knowledge and the inevitability of perspective in understanding? A large part of the project of the course is to see the ways philosophical writings on the nature of judgement may be able to help us solve these pressing problems. Two of the common themes that link the philosophical and contemporary legal arguments are the role of story telling or narrative and the role of common sense in judgement.

The second problem is a long standing one: is there something distinctive about the legal form of judgement that justifies (or requires) the institutional forms we have developed for judicial decision making. This problem involves not only the "undemocratic" nature of courts, but the particular norms of discourse that we think of as "legal." If we have a better understanding of what judging consists of, and what foster good judgement, then we can do a better job of thinking about the appropriate institutions, norms and practices of law. Since many of the readings address themselves to the question of political and moral judgement, we will have to ask whether there is reason to believe that legal or judicial judgement involves something different.

COURSE REQUIREMENTS: Class participation and bi-weekly one page "comments" (25%) and a 25 page paper (75%) (last date for written work, **NOON**, law students 10:00 AM).

The paper will focus on 3 or 4 of the readings, connecting them to each other and to the main themes of the course. Students should show how together they contribute to these themes, or develop a particular problem related to these themes, and use the articles to work the problem through, or show how the insights of these articles help us better understand a particular concrete case or problem. If you are using an example not drawn from the course material, be sure you do not spend too much space presenting the example. A maximum of 2-3 pages. If you find you cannot present the example you have in mind within that space, you may use additional pages. But then you will need to add those additional pages to the total length of the paper, so that you still have at least 22 pages of analysis, integrating the example into your discussion of the texts and the key issues. A similar approach applies to using material outside the assigned reading. You are, of course, welcome to note other material that adds to your argument. But if you spending more than a few lines referring to that material, you should ensure that you still have the required page length devoted to the analysis of the texts and issues in the course.

BY THE LAST CLASS, STUDENTS SHOULD SUBMIT A PARAGRAPH SUMMARY OF THEIR PAPER TOPIC AND THE TEXTS THEY WILL FOCUS ON, OR ANY OUTLINE OF THE PAPER WHICH IDENTIFIES THE TEXTS. STUDENTS MAY SUBMIT THIS SUMMARY OR OUTLINE EARLIER, BUT I RECOMMEND THAT IF YOU DO SO YOU AT LEAST SKIM ALL THE MATERIALS SO YOU WILL KNOW WHICH WILL WORK BEST FOR YOUR TOPIC.

REQUIRED READING: Materials to be purchased through the Law School Bookstore and Judgment, Imagination and Politics, Ronald Beiner and Jennifer Nedelsky, eds. Available at the Toronto Women's Bookstore, Harbord Street just west of Spadina.

- Week 1. Introduction
- Week 2. Beiner, Political Judgment, Ch 2, in Materials (noted as M); Hannah Arendt, "The Crisis in Culture" Part II, (Part I optional) from Between Past and Future, in Beiner and Nedelsky, Judgment, Imagination and Politics, noted as JIP; Nedelsky, SSHRC Proposal (M); R.D.S. case, SCC September 26, 1997 (M). Come to class with an example of a problem of judgement and thoughts on how these preliminary readings help us reflect on it.
Group 1, comment; Group 2, respond
- Week 3. Beiner, Ch. 4, 5, 6 (Ch.3 optional) (M)
Group 2 comment, group 3 respond.
- Week 4. Arendt, Lectures, pp. vii – p. 51; Kant, Critique of Judgment, s 6-8, Werner Pluhar, translator (Hacekt, 1987). (M)
Group 3 comment, group 4 respond.
- Week 5. Arendt, Lectures, p. 51-85, (M) Bilsky, "When Actor and Spectator Meet in the Courtroom: Reflections on Hannah Arendt's Concept of Judgment" **JIP**
Group 4 comment, group 1 respond.

- Week 6. Beiner, "Rereading Hannah Arendt's Kant Lectures"; Nedelsky, "Judgment, Diversity and Relational Autonomy" **JIP**; Kant, Critique of Judgment, ss 31-42
Group 1 comment, group 2 respond. **ATTENTION: HEAVY READING, START EARLY**
- Week 7. Seyla Benhabib, "Judgment and the Moral Foundations of Politics in Hannah Arendt's Thought," Iris Marion Young, "Asymmetrical Reciprocity: On Moral Respect, Wonder, and Enlarged Thought," **JIP**
Group 2 comment, group 3 respond
- Week 8. Lisa Disch, "Please Sit Down, but don't Make Yourself at Home": Arendtian 'Visiting' and the Prefigurative Politics of Consciousness Raising," and Nancy Fraser, "Communications, Transformation, and Consciousness Raising" in Hannah Arendt and the Meaning of Politics, Craig Calhoun and John McGowan, eds. **M**
Group 3 comment, group 4 respond
- Week 9. Kim Lane Scheppele, "Just the Facts, Ma'am: Considering Considered Stories," Maria Lugones, "Playfulness, 'World'-Travelling, and Loving Perception," *Hypatia* 2:2-17 (Summer, 1987). **M**
Group 4 comment, group 1 respond
- Week 10. Nedelsky, "Embodied Diversity: Challenges to Law," 42 *McGill Law Journal* 91 (1997); **JIP** Sarah Hoagland, Lesbian Ethics, "Anger and Political Perception," p.178-184 and "Integrating Reasons and Emotions," pp.157-164; R.D.S. case. **M**
Group 1 comment, group 2 respond
- Week 11. Kirstie M. McClure. "The odor of Judgment: Exemplarity, Propriety, and Politics in the Company of Hannah Arendt" in Calhoun and McGowan **M**, and Albrecht Wellmer, "Hannah Arendt on Judgment: The Unwritten Doctrine of Reason" **JIP**
- Week 12. Onora O'Neill, Constructions of Reason: Explorations of Kant's Practical Philosophy, ch. 9, "The Power of Example" (Cambridge University Press, 1990) and Barbara Herman, "The Practice of Moral Judgment," *The Journal of Philosophy*, (1985) **M**
Group 3 comment, Group 4 respond
- Week 13. Nedelsky, "Communities of Judgment and Human Rights," **M** and George Kateb, "The Judgment of Arendt" **JIP**
Group 4 comment, group 1 respond

JUDGEMENT COURSE MATERIALS

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Beiner, <u>Political Judgement</u> Ch 2	1
Nedelsky, SSHRC Proposal	21
<i>R v. R.D.S.</i> , SCC September 26, 1997	29
Beiner, <u>Political Judgement</u> ch 3 (optional reading)	73
Beiner, <u>Political Judgement</u> chs 4, 5, 6 & endnotes	114
Arendt, <u>Lectures</u> pp. vii – p. 51	197
Kant, <u>Critique of Judgement</u> ss. 6-8	226
Arendt, <u>Lectures</u> pp. 51-85 & endnotes	230
Kant, <u>Critique of Judgement</u> ss. 31-42	253
Disch, “Please Sit Down...”	268
Fraser, “Communication, Transformation and Consciousness Raising	285
Sheppele, “Just the Facts, Ma’am ...”	290
Lugones, “Playfulness, ‘World’-Travelling, and Loving Perception”	332
Hoagland <u>Lesbian Ethics</u> , “Anger and Political Perception”	340
Hoagland, <u>Lesbian Ethics</u> , “Integrating Reasons and Emotions”	344
McClue, “The Odor of Judgement: ...”	351
O’Neil, <u>Construction of Reason</u> ..., ch. 9 “The Power of Example”	368
Herman, “The Practice of Moral Judgment”	381
Nedelsky, “Communities of Judgement and Human Rights”	393

