

Instructions for the essay questions for weeks 4 -10

1. We have already handed out the questions for the first 3 weeks of session. These questions are the **longer, research essays** questions that relate to the rest of the topics to be covered in the course.
2. You must do **one** question from this list of topics.
3. The date due for each question is clearly set out. You have around **4-5 weeks** from the date of handing out the questions to submit your answers for all questions up to week 8. Thereafter, the time for submission becomes tighter as we need time to mark your essays before the end of the examination period.
4. All essays must contain footnoted references to primary and secondary sources used. You are also required to list a bibliography of works cited as well as works not cited but relied on in formulating your views.
5. In this document you will also find bibliographies for some but not all essay topics. Given this is a research essay you are encouraged to do own research.
6. You should leave a significant margin on the right-hand side to allow for comments and feedback. In general, you must leave space on your essay for comments. If your essay is single-spaced with insignificant margins on either side, then you might not receive any comments in the margin.
7. All essays must be submitted via the turnitin module on Moodle.

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Question for Weeks 4 (Hegel/Kant) due 30 July, 3000 words

1. Consider how Kant and Hegel present “modern” law. What in your view are the significant similarities of, and differences between, these two accounts? Give attention to how each understands the relationship between law and morals. Use this discussion to comment upon and evaluate their respective accounts of punishment.

Questions for Week 5 (Habermas or Classical, Modern Liberalism) due 6 August, 3,000

2. For Habermas law and practical reason have a connection to rationality. Delineate and critically analyse the way Habermas draws this connection and comment on whether you think his view is ultimately capable of being implemented under current, arguably irrational social and political conditions.

OR

3. What, according to Habermas, are the conditions necessary for there to be a just legal order in modern societies? Do you think these conditions can actually obtain in such societies, or are they, despite Habermas's arguments to the contrary, somewhat utopian?

OR

4. Compare Kant's account of liberalism with John Rawls' account. This is a large question so focus on what you consider to be the significant points of similarity and difference. Your essay, among other things, should have some discussion of the following three matters; (1) their respective accounts of just what human activity comes within an account of justice, (2) their respective treatment of pluralism (of course here you have to make clear how you understand this term) and (3) how each understands the drawing of a boundary between the public and the private arenas.

Question for Week 7 (Derrida) due 10 August, 3,000 words

5. "Justice in law and in life is impossible. At the same time it is also imperative that we try to implement justice in law and in life". Assuming this is a correct precis of Derrida's position explain how and why Derrida reaches this apparently contradictory and 'aporetic' conclusion? Do you agree with him in whole or in part, or does his theory largely by-pass the real problems facing law and justice today?

Questions for Week 8 (Relational Feminism or Legal or Decision-making) (due 13 August) 3000 words

6. "If we have justice, then why should we care about the ethics of care in law and in life"? Do you agree with this proposition?

OR

7. What, for you, is good legal decision-making? How should the legal decision-maker think of this role? In this context, what is the best way to think of the boundary between what is relevant for decision-making and what is not relevant? Examples would be good.

Questions for Week 9 (Practical Reason Law and Politics) (due 17 August) 3,000 words

8. Discuss how practical reasoning works, or should work, in politics (70% of the marks). As a point of comparison discuss how it works (or should work) in law (30% of the marks). In your discussion of politics:

EITHER

Give some attention to John Rawls' account of the "Burdens of Judgement" (in Political Liberalism lecture 2.2) and his more general discussion of public reason. Here, for comparative purposes, you may care to discuss Jurgen Habermas' account of public reason. Examples would be good.

OR

Discuss how for better or worse our ideas about immigration justice are guided by the categories we use and the distinctions we make. Among other matters discuss the worth of such ideas as - membership, the right to have rights, the legitimate expectations of citizens and non-citizens, open and closed borders and the distinction between first order and second order injuries to immigrants. Examples would be good.

Questions for Weeks 10 (Honneth (due 19 August) 3,000 words

9. "Problems relating to social justice today can be fruitfully understood within the framework of a theory of recognition along the lines of that offered by Axel Honneth". Do you agree? If so, why? If not, why not?"

OR

10. "Social justice today is synonymous with socialism: socialism reconceptualised as a democratic form of life: that is to say, the permeation of democracy into the personal, economic and political spheres". Assuming this proposition accurately captures the thrust of Honneth's most recent writings on justice what do you think it actually means, and do you agree with him? (Optional: where do you think law fits into this picture? Or, put another way, what role do you think Honneth attributes to law in bringing about and guaranteeing social justice?)

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Bibliographies for the essay topics

Kant/Hegel (Qu. 1)

See earlier bibliography for short essays, for works on Kant and Hegel on law

Specifically on Kant and Hegel and punishment (though this topic is often discussed in the more general works)

- Collingwood R "Punishment" in *Essays in Political Theory* Clarendon Press 1989
- Dolinko D Punishment in *The Oxford Handbook of Philosophy of Criminal Law* (ed Deigh J 2011, (online)
- Johnson J 'Revisiting Kantian Retributivism...' 2 *Criminal Law and Philosophy* (2008) 291
- Kolakowski L "Crime and Punishment" in *Is God Happy?* Penguin Books 2012
- White M *Retributivism* Oxford UP 2011

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Habermas (Questions 2 & 3)

- Baxter, H. *Habermas: The Discourse Theory of Law and Democracy*, Stanford, Stanford Law Books, 2011.
- Brand, A. *The Force of Reason: An Introduction to Habermas's 'Theory of Communicative Action'*, Sydney, Allen and Unwin, 1990.
- Edgar, A. *Habermas: the Key Concepts*, London, Routledge, 2006.
- Finlayson, J. *Habermas: A Very Short Introduction*, Oxford, Oxford University Press, 2005.
- Flynn, J. "Habermas on Human Rights: Law, Morality and Intercultural Dialogue", *Social Theory and Practice*, Vol. 29, No. 3 (2003) pp. 431-457.
- Habermas, J (1984a) *The Theory of Communicative Action Vol. I Reason and the Rationalization of Society*, trans. T. McCarthy, Boston, Beacon Press, 1984.
- Habermas, J *The Theory of Communication Vol. 2. Lifeworld and System: A Critique of Functionalist Reason*, trans. T. McCarthy, Boston, Beacon Press, 1987.
- Habermas, J "Law and Morality", *The Tanner Lectures on Human Values*, Vol. 8 (1988) S. M. McMurrin (ed.) trans. K. Baynes, Cambridge, Cambridge University Press., pp.217-79.
- Habermas, J, *Justification and Application*, trans. C. Cronin, Cambridge, Massachusetts, MIT Press, 1993
- Habermas, J. "Paradigms of Law", *Cardozo Law Review*, Vol. 17, No. 4/5 (1996) pp. 771-784.
- Habermas, J "Constitutional Democracy: A Paradoxical Union of Contradictory Principles?", *Political Theory*, Vol. 29, No. 6 (2001) pp. 766-781.
- Ingram, D. *Habermas: Introduction and Analysis*, Ithaca, Cornell University Press, 2010.
- Lafont, C. "Procedural Justice? Implications of the Rawls-Habermas Debate for Discourse Ethics", *Philosophy and Social Criticism*, vol. 29, No. 2 (2003) pp. 167-185.
- Maus, I. (1996) "Liberties and Popular Sovereignty: On Jürgen Habermas's Reconstruction of the System of Rights", *Cardozo Law Review*, Vol. 17, No. 4/5, pp. 825-882.
- Olsen, K. (2003) "Do Rights Have a Formal Basis? Habermas's Legal Theory and the Normative Foundations of the Law", *The Journal of Political Philosophy*, Vol. 11, No. 3, pp. 273-294.
- Shelly, R. "The Discourse Concept of the Rule of Law and Democracy", *Southern Cross University Law Review*, Vol. 11 (2007) pp. 59-80.

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Liberalism, Kant and Rawls (Qu. 4)

On Liberalism

- Bell D “What is Liberalism” *Political Theory* (2014)
- Bernstein R “The spectre haunting multiculturalism” 36 *Philos and Soc Crit* (2010) 381
- Gutman A (ed) *Multiculturalism* Princeton UP 1994
- Heller A “The Complexity of Justice ...” 9 *Ratio Juris* (1996) 138
- Kymlicka, W. *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, Oxford, OUP, 2001 (especially chapter 1).
- Larmore C *The Morals of Modernity* Cambridge UP 1996
- Raz J *The Morality of Freedom* Clarendon 1986
- Ryan A *The Making of Modern Liberalism* Princeton UP 2012
- Sandel M “Populism, liberalism and democracy” *Philos and Soc Crit* (2018) 353
- Smith N “Multiculturalism and Recognition” in Ivoson D (ed) *The Ashgate Research Companion to Multiculturalism* Routledge 2016
- Walzer M “Liberalism and the Art of Separation” 12 *Political Theory* (1984) 315
- Walzer *Politics and Passion* Yale UP 2004

On Kant

See earlier bibliography on Kant for the short essays.

On Rawls

- Bailey T and Gentile V (eds) *Rawls and Religion* Columbia UP 2015
- Calhoun C & ors (eds) *Habermas and Religion* Polity 2013
- Finlayson J *The Habermas Rawls Debate* Columbia UP 2019
- Freeman S *Rawls* Routledge 2007
- Hedrick T *Rawls and Habermas* Stanford UP 2010
- March A ‘Rethinking Religious Reasons in Public Justification’
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2217691
- Nussbaum N “Perfectionist Liberalism and Political Liberalism” 39 *Philos and Pub Affairs* (2011) 3
- Olney J “Justice and Legitimacy: Rawls, Schmitt and the Normativity of Law” *Law, Culture and the Humanities* 12 (2016) 49
- Rawls J *A Theory of Justice* Harvard UP 1971
- Rawls J *Political Liberalism* (expanded version) Columbia UP 2005
- Redhead M “Complimenting rivals: Foucault, Rawls and the problem of public reasoning” *Political Theory* (2015) 1
- Vallejo I “Public Reason, Secularism, and Natural Law”
http://www.academia.edu/2570657/Public_Reason_Secularism_and_Natural_Law

Verges-Gifra J “Why Rawls Should have Resisted the Hermeneutic Temptation 37 *J of Social Philosophy* (2006) 584

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Derrida (Question 5)

- Andresen, J. “Deconstruction, Normativity and Democracy to Come”, *Philosophy Today*, Vol. 54, No. 2 (2010) pp. 103-120.
- Balkin, J. “Transcendental Deconstruction, Transcendent Justice”, *Michigan Law Review*, Vol. 92 (1993-4) pp. 1131-1186
- Cohen, J. “On the Necessity of Violence for any Possibility of Justice: A Comment”, *Cardozo Law Review*, Vol. 13 (1991) pp. 1305
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- Critchley, S. *The Ethics of Deconstruction: Derrida and Levinas*, 2nd ed, Edinburgh, Edinburgh University Press, 1999.
- Derrida, J. *Writing and Difference*, trans. A. Bass, London, Routledge, 1978. (Note, you should only look at the two essays entitled “Violence and Metaphysics: An Essay on the Thought of Emmanuel Levinas” and “Structure, Sign, and Play in the Discourse of the Human Sciences”).
- Gaon, S. “Judging Justice: The Strange Responsibility of Deconstruction”, *Philosophy and Social Criticism*, Vol. 30, No. 1 (2004) pp. 97-114.
- Gehring, P. “Force and the ‘Mystical Foundation’ of Law: How Jacques Derrida Addresses Legal Discourse”, *German Law Journal*, Vol. 6, No. 1 (2005) pp. 151-169.
- Goodrich, P. (ed) *Derrida and Legal Philosophy*, Basingstoke, Palgrave MacMillan, 2008.
- Hunter, I. “The Desire for Deconstruction: Derrida’s Metaphysics of Law”, *Communications, Politics and Culture*, Vol. 41, No. 1 (2008) pp. 6-29.
- Litowitz, D. “Derrida on Law and Justice: Borrowing (illicitly?) from Plato and Kant”, *Canadian Journal of Law and Jurisprudence*, Vol. 8 (1994), pp. 325
- Lucy, N. A *Derrida Dictionary*, Carlton, Blackwell, 2004
- Malan, Y. “Deconstruction and the Difference between Law and Justice”, *Stellenbosch Law Review*, Vol. 3 (2001) pp. 440
- Matthews, B. “Why Deconstruction is Beneficial”, *Flinders Journal of Law Reform*, Vol. 4, No. 1 (2000) pp. 105-126
- McCormick, J. “Derrida and Law: Or Poststructuralism Gets Serious”, *Political Theory*, Vol. 29, No. 3 (2001) pp. 395-423.
- Menke, C. “Ability and Faith: On the Possibility of Justice”, *Cardozo Law Review*, Vol. 27, No. 2 (2005) pp. 599-
- Newman, S. “Derrida’s Deconstruction of Authority”, *Philosophy and Social Criticism*, Vol. 27, No. 1 (2001) pp. 1-20.
- Rosenfeld, M. “Derrida, Law, Violence and the Paradox of Justice”, *Cardozo Law Review*, Vol. 13 (1991), pp. 1268-

- Sokoloff, W. "Between Justice and Legality: Derrida on Decision", *Political Research Quarterly*, Vol. 58, No. 2 (2005) pp. 341-352.
- Valverde, M. "Derrida's Justice and Foucault's Freedom: Ethics, History and Social Movements", *Law and Social Inquiry*, Vol. 24 (1999), pp. 658.
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Relational Feminism (Qu.6)

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- Barnett, H. *Introduction to Feminist Jurisprudence*, London, Cavendish Publishing, 1998.
- Bohler-Muller, N "What the Equality Courts can Learn from Gilligan's Ethic of Care: A Novel Approach", (2000) 16(4) *South African Journal on Human Rights*, 623
- Drakopoulou, M. "The Ethic of Care, Female Subjectivity and Feminist Legal Scholarship", (2000) *Feminist Legal Studies*, 109.
- Friedman, L. F. (ed.), *Feminist Jurisprudence: The Difference Debate*, Lanham, Rowman and Littleton, 1992.
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- Hayes, C. "Anti-Essentialism in Practice: Carol Gilligan and Feminist Philosophy", (1997) 12(3) *Hypatia*, 142.
- Jaggar, A. M. and Young, I. M. *A Companion to Feminist Philosophy*, Blackwell, Oxford, 1998 (particularly some of the essays in Part VIII (Ethics) and Part X (Politics)).
- Moore, M. "The Ethics of Care and Justice", (1999) 20 *Women and Politics*, 1
- Smith, P. (ed.) *Feminist Jurisprudence*, New York, Oxford University Press, 1993.
- Ruiz, B. "Caring Discourse: The Care/Justice Debate Revisited", *Philosophy and Social Criticism*, Vol. 31, No. 7 (2005) pp. 773-800.
- Rumsey, J. "Justice, Care and Questionable Dichotomies", *Hypatia*, Vol. 12, No. 1 (1997) pp. 99-113.
- Slote, M. "Carol Gilligan and the History of Ethics", in Slote, *Essays on the History of Ethics*, Oxford, Oxford University Press, 2010, pp. 150-161.
- Slote, M. *The Ethics of Care and Empathy*, London, Routledge, 2007.

- Taylor, B., Rush, S. and Munro R. J. (eds) *Feminist Jurisprudence, Women and the Law: Critical Essays, Research Agenda and Bibliography*, Rothman, Littleton, Colorado, 1999.
- Villmoare, A. "Review Section Symposium Feminist Jurisprudence; Feminist Jurisprudence and Political Vision", (1999) *Law and Social Inquiry*, Vol. 24, 443.
- West, R. *Re-imagining justice: progressive interpretations of formal equality, rights, and the rule of law*, Ashgate, Dartmouth, 2003
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Legal decision-making (Qu.7)

- Amaya A *Law Virtue and Justice* Oxford UP 2013
- Alexy R "The Special Case Thesis" 12 *Ratio Juris* (1999) 374
- Brennan E "Doing Justice to Justice: Ricouer's Discovery of the Juridical Plane" *Philosophy Today* 58 (2014) 591
- Del Mar, M and Michelon C (eds) *The Anxiety of the Jurist: Legality, Exchange and Judgment* Ashgate 2013; esp essays by Michelon, Bell, MacLean, Schafer
- Dworkin R *Law's Empire* Fontana 1986
- Edlin D "Kant and the common law..." 23 *Can J L and Juris* (2010) 429
- Fisell B "Modern Critiques of Judicial Empathy" *Michigan LR* (2016) 817
- Gatta G "Visiting or house-swapping? Arendt and Jaspers on empathy..." *Philosophy and Social Criticism* (2014) 1
- Greenawalt K *Legal Reasoning* Oxford UP 2010
- Hart H *The Concept of Law* Clarendon Press 1961 ch 7
- McEwan Ian *The Children Act* Jonathan Cape 2014
- Mootz F and Taylor G *Gadamer and Ricoeur* Continuum 2011
- Murphy J and Hampton J *Forgives and Mercy* Cambridge UP 1988
- Nussbaum M "Compassion: The Basic Social Emotion" *Social Philosophy and Policy* (1996) 27
- Pippin R "The Force of Felt Necessities" in *The Persistence of Subjectivity* U of Chicago Press 2006
- Posner R *How Judges Think* Harvard UP 2008
- Solum L "Virtue Jurisprudence: a virtue- centred theory of judging" 34 *Metaphilosophy* (2003) 178
- Thiele L *The Heart of Judgement* Cambridge UP 2006
- van Domselaar I "A Neo-Aristotelian notion of reciprocity..."
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2151539
- van Doselaar I "Moral Quality in Adjudication *Netherlands J of legal Philosophy* (2015) 1
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2600243
- Vermeule A *Judging Under Uncertainty* Harvard UP 2006
- White J B *Justice As Translation* U of Chicago Press 1992

A hermeneutical approach

- Bahdi R “Truth and Method in the Domestic Application of International Law” 15 *Canadian J of Law and Jurisprudence* (2002) 255
- Doppelt G “The Theory of Justice from a Hermeneutic Perspective” 46 *Inquiry* (2003) 449
- Dostal R “Gadamarian Hermeneutics and Irony” 38 *Research in Phenomenology* (2009) 247
- Fritsch M “Equality and Singularity in Justification and Application Discourses” 9 *European J of Political Theory* (2010) 328
- Gonzalez F “Dialectic and Dialogue in the Hermeneutics of Paul Ricoeur and H G Gadamer” 39 *Continental Philosophy Review* (2006) 313
- Muldoon M “Ricoeur’s Ethical Poetics” 45 *International Philosophical Q* (2005) 61
- Nuyen A “Critique of ideology; Hermeneutics or critical theory?” 17 *Human Studies* (1995) 419
- O’Neill O “Normativity and Practical Judgment” *J of Moral Philosophy* (2007) 393
- Poscher R “Hermeneutics, Jurisprudence and Law” in Routledge Companion to Hermeneutics J Malpass (ed) 2015
- Poscher “Hermeneutics and Law” in Cambridge Companion to Hermeneutics M Forster (ed) 2019
- Ricoeur P *The Just U of Chicago P* 2000
- Ricoeur P *Reflections On The Just U of Chicago P* 2007
- Roberge J “What is Critical hermeneutics?” 106 *Thesis Eleven* (2011) 5
- Ronzoni M “Constructivism and Practical Reason” 7 *J of Moral Philosophy* (2010) 74
- Scheibler I “Gadamer, Heidegger, And The Social Dimensions Of Language” 76 *Chicago-Kent Law Rev* (2001)
- Symposium on “The Uses of Judgment” 34 (1-2) *Philosophy and Social Criticism* 2008
- Thaler M “Political Judgment beyond paralysis and heroism” 10 *European J of Political Theory* (2010) 225
- Warnke G *Justice And Interpretation* MIT Press 1992
- Warnke G “The Hermeneutic Circle versus Dialogue” 65 *The Review of Metaphysics* (2011) 1

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Practical Reason in Law and Politics (Qu.8)**Practical Reason in general:**

- Arendt H “Thinking and Moral Considerations” in *Responsibility and Judgment*
- Aristotle *Nicomachean Ethics* Book 6
- Duke G “Aquinas Kant and the Eclipse of Reason” *The Review of Metaphysics*; Jun 2016; 69, 4; 709
- Gadamer HG “The hermeneutic relevance of Aristotle” in *Truth and Method* (J Weinsheimer trans) Continuum 1994
- “Gadamer on practical reasoning”, ch 3 in *Gadamer in Conversation* R Palmer (ed) Yale UP 2001

Habermas J “On the pragmatic, the ethical and the moral employment of reason” in *Justification and Application: Remarks on Discourse Ethics* Polity 1995

Norris A “Being realistic about neoliberalism” *Constellations* (2020) 63

Rawls J *Political Liberalism* (expanded version) Columbia UP 2005, esp. lecture 2.1 and 2.2

Practical reason and law

See bibliography for question 7

Rawls and Habermas on public reason

For Rawls

See bibliography on Rawls for qu 4

And for Habermas on this issue among many other writings see

Calhoun C & others (eds) *Habermas and Religion* Polity 2013

Gordon P E “Critical Theory between the Sacred and the Profane” *Constellations* (2016) 466

Mertel K Secularism vs Post Secularism *Critical Horizons* (2018) 93

Rees D “Decolonizing Philosophy...” *Constellations* (2017) 219

Practical reason exemplified by the ideas and concepts of immigration justice

Blake M “Immigration, Jurisdiction and Exclusion” *Philosophy and Public Affairs* 41/2 (2013) 103

Bosniak L Review of Miller *Strangers in Our Midst* “[Immigration Ethics and the Context of Justice](https://doi.org/10.1017/S089267941600068X)” *Ethics and International Affairs* 31/1 (2017) 93
<https://doi.org/10.1017/S089267941600068X>

Cantu F “Has any one of us wept” *NYRB* Jan 2019

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Chamberlain J “Minoritarian Democracy: the democratic case for no borders” *Constellations* 24/2 (2017)

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DeGoover S and others *The Right to Have Rights* Verso 2018

Grey C *Justice and Authority in Immigration Law* Hart 2015

Ingram D “Exceptional Justice? A Discourse Ethical Contribution to the Immigrant Question” 10 *Critical Horizons* (2009) 1

Kuczewski M “Who Is My Neighbor? ...access to health care for immigrants” 32 *Theor Med Biotech* (2011) 327

Miller D and Hashmi S (eds) *Boundaries and Justice* Princeton UP 2001

Miller D *Strangers in Our Midst* Harvard UP 2016

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- Oudejeans N “The Right to have Rights: A New Perspective on Irregular Immigration” *Political Theory* (2019)1 (Materials on Moodle Class 15)
- Parekh S “Beyond the ethics of admission” 40:7 *Philosophy and Social Criticism* (2014) 645
- Parekh S *Refugees and the Ethics of Forced Displacement* Routledge 2017
- Pevnick R *Immigration and the Constraints of Justice* Cambridge UP 2011
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- Stiltz A “The duty to allow harmless migration” <https://www.law.berkeley.edu/wp-content/uploads/2016/01/The-Duty-to-Allow-Harmless-Migration.pdf>
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- Wessel J “On Border Subjects...” 23:1 *Constellations* (2016)

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Honneth (Questions 9 & 10)

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- Deranty, J-P, *Beyond Communication: A Critical Study of Axel Honneth’s Social Philosophy*, Leiden, Brill, 2009.
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- Honneth, A. *Disrespect: The Normative Foundations of Critical Theory*, Cambridge, Polity Press, 2007.
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