

第一題：(本題 50 分)

法哲學家 Andrei Marmor 曾經對「客觀性」與「主觀性」，做了以下三種區分與界定：

A.語意學的客觀與主觀：一個陳述(statement)是語意上客觀的，若且唯若它是一個有關於在世界中特定客體的陳述。一個陳述在語意上是主觀的，若且唯若它表達了主體的情感、態度、反應、欲求等。

B.形上學的客觀與主觀：一個論述(discourse; 亦可稱為言說)是形上學意義客觀的，若且唯若，這個論述所要描述的客體(object)確實存在於世界中。相反的，若所描述的客體並不存在於世界中，那此一論述就是主觀的。

C.邏輯上的客觀與主觀：認為特定種類的論述，具有客觀性，若且唯若我們可以將真值(truth value)賦予這種論述中的陳述。如果完全不可能這麼做，那麼此類論述就是邏輯上主觀的。

請以前述之 A. B. C. 三種分類，分析討論下列問題：

- (1)「中華民國憲法第十一條規定『人民有言論、講學、著作及出版之自由』」，是一個主觀還是客觀的陳述或論述？
- (2)大法官釋字第 623 號認為，《兒童及少年性交易防制條例》第二十九條的規定：「以廣告物、出版品、廣播、電視、電子訊號、電腦網路或其他媒體，散布、播送或刊登足以引誘、媒介、暗示或其他促使人為性交易之訊息者，處五年以下有期徒刑，得併科新臺幣一百萬元以下罰金」，是一個合憲的規定，大法官的此等論述，是一種主觀還是客觀的論述？

第二題：(本題 50 分)

請仔細閱讀底下的文字，然後回答下列三個問題。

"My analysis of disgust and shame suggests that certain forms of liberalism (or in the case of Kahan-Etzioni, of purported liberalism) should be rejected, as in tension with liberal ideas of respect for human dignity. Does it suggest, by contrast, that there is any particular version of liberalism that we ought to favor? I believe it does. If we think, first, of the political conception of the person that the arguments of this book lead us to favor, we find that such a conception need to combine an emphasis on human ability with an emphasis on imperfection, need, and also, at times, asymmetrical need. The Aristotelian idea of the citizen as 'political animal' has great promise as we try to move beyond the problems diagnosed here because this conception emphasizes the continuity between the human being and other animal creatures, with their needy and mortal bodies, while not ignoring the fact that the human being has traits (and problems) that are different from those of any other animal creature, and a source of potential difficulty for society. The Aristotelian conception sees the human being as a creature both needy and capable, whose capacities and whose dignity are thoroughly bound up with its animal nature, and whose capacities all require rich support from the material environment. The emphasis on materiality and need is conceptually helpful, because we learn not to think of our needs for material things as embarrassing and humiliating facts about us. Instead, materiality and need are themselves part of the specific form of dignity that a human being has."

- (1)這段文字出自美國法哲學家 Martha Nussbaum 的著作"*Hiding from Humanity. Disgust, Shame, and the Law*"，這本書已有中文譯本，請問現有中文譯本的書名為何？(5%)
- (2)Nussbaum 的立場屬於一種 political liberalism，中文一般翻譯為「政治自由主義」，請說明 (in the sense of Rawlsian) 政治自由主義的意義、基本預設和立場。(20%)
- (3)這段文字提到 materiality，這個字應如何翻譯成中文？Nussbaum 使用這個概念來分析人性基本需要和能力，請參考她這段文字的意涵，舉出一些例子來說明何謂 our needs for material things，並請說明，傳統自由主義的社會契約論思考模式是否 (如 Nussbaum 所言) 忽略了這一些需要？最後，請藉此評析自由主義 (包括 Rawlsian 政治自由主義) 思考模式可能因此受到的質疑。(25%)