



UNIVERSITEIT VAN AMSTERDAM

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# Law, Justice and Morality 1

*Syllabus*

**PPLE 2014-1015**

# 1. Introduction

## 1.1. General Information

Course number	3801LJ1PVY
Credits in EC	6
Semester, period	Semester 1, Block 2
Instructor	Roland Pierik

## 1.2. Content of the course

**Objective:** The objective of this course is to explore the relationship between law, justice and morality, and to analyze how law relates to the moral values in society and how it is used to advance notions of justice.

**Description of content:** It is often assumed that law, justice, and morality come together to form a single straightforward, coherent concept. The popular media often suggests, for example, that a constitutional state equals just institutions, and that legal procedures, if they function properly, lead to outcomes that are fair from a moral point of view. However, contrary to these popular views, law, justice and morality are often not at all aligned. For one thing, there are a myriad of theories of justice, each proposing different ways of organizing law and the institutions of the state. Moreover, legal theory tends to emphasize that even unjust law can, in specific instances be legally valid. Finally, Western societies are characterized by a plurality of (religious and secular) ideas of the good life (moralities). The question then becomes: how can law offer just and effective solutions when such moralities conflict.

In this course, we will take a closer look at the concepts of law, justice, and morality, and how these concepts are interrelated. The course revolves around a discussion of dominant philosophies of law, – legal positivism and natural rights theories – and theories of justice and morality – utilitarianism, libertarianism, deontology, egalitarian liberalism, and communitarianism. From these various philosophical approaches, several issues concerning the interrelation between law, justice and morality are discussed, including the following:

- to what extent does law as a system of rules in an actual society reflect ideas about justice and morality and when may specific legal principles demand a deviation from such convictions?
- how does the idea of a just society (justice) relate to various ideas of the good life (morality)?
- how should a just society deal with conflicting versions of morality in a pluralist society?

These discussions start from actual political and legal controversies and issues.

### 1.3. Intended learning outcomes

At the end of this course students:

- are familiar with, and can *reproduce* the concepts of law, justice and morality as well as the relationship between these concepts;
- have gained insight into and can *explain* the disciplinary aims and structure of law itself (as opposed to morality and justice);
- can *recognize, outline, and apply* the dominant normative philosophies of law, justice and morality and are able to discuss them in an interdisciplinary way;
- can *critically evaluate* the main ideas of these philosophical theories in relation to current political and legal controversies and issues;
- can *recognize and apply* the interconnections between the dominant normative philosophies of law, justice and morality in discussions of political, psychological and economic problems;
- are able to *develop their own ideas* about the relationship between law, justice and morality, and to defend their views with arguments and examples;
- can *demonstrate* the above skills in short and long-form written essays, classroom debates and group presentations;
- can *articulate* their personal moral code and compare it to dominant normative philosophies of law and justice.

## 2. Practical information

**Didactic practices:** two weekly lectures (2 x 2 hours) and two tutorials (2 x 2 hours).

### Teaching staff

<b>Lecturer:</b>	Roland Pierik	r.pierik@uva.nl
<b>Tutors:</b>	Alison Fischer	a.l.fischer@uva.nl
	Tobias Arnoldussen	N.T.Arnoldussen@uva.nl
	Robert Weaver	robert.m.weaver@gmail.com

### Lectures:

- Wednesday 09.00-11.00 (OMHP F.201c)
- Friday 09.00-11.00 (OMHP F.201c).

### Tutorials:

Tutorial	Tutor	Time	Location
Group 1	A. Fischer	Monday 11.15-13.00	REC N.140
Group 1		Thursday 13.15-15.00	REC N.141
Group 2	A. Fischer	Monday 13.15-15.00	REC N.140
Group 2		Thursday 11.15-13.00	REC N.141
Group 3	T. Arnoldussen	Monday 11.15-13.00	REC N.141
Group 3		Thursday 13.15-15.00	REC N.144

Group 4	T. Arnoldussen	Monday 13.15-15.00	REC N.141
Group 4		Thursday 11.15-13.00	REC N.144
Group 5	R. Weaver	Monday 13.00-14.45	REC N.144
Group 5		Thursday 15.00-16.45	REC N.140
Group 6	R. Weaver	Monday 15.00-16.45	REC N.144
Group 6		Thursday 13.00-14.45	REC N.140

### 3. Literature

- Sandel, M. J. (2009). *Justice: What is the Right Thing to Do?* London: Penguin Books.
- Reader with additional literature (available at PPLE Student Desk).

### 4. Format

Overview of lectures and tutorials: compulsory literature and themes.

#### Week 1

##### Tutorial 1A (Monday, October 27)

Compulsory reading: none

Theme: Welcome! General introduction of the course and its design: tutorials, lectures, grading system. Moreover, we will take ample time to introduce ourselves – tutors and students – to each other.

##### Lecture 1A (Wednesday, October 29)

Compulsory reading:

- Sandel, M. J. (2009). *Justice: What is the Right Thing to Do?* (Chapter 1) London: Penguin Books.

Theme: What is 'doing the right thing'? General introduction to the themes of the course, analyzing the separate concepts of law, justice and morality and their relationships to each other.

##### Tutorial 1B (Thursday, October 30)

Compulsory Reading:

- Aldisert, R., Clowney, J. S., & Peterson, J. D. (2007-2008). Logic for Law Students: How to Think Like a Lawyer. *University of Pittsburg Law Review*, 69(1), 1-22.

Theme: In certain respects, legal analysis differs categorically from political theory, political science or economics. This tutorial explains some particularities of the legal discipline.

##### Lecture 1B (Friday, October 31)

Compulsory reading:

- Simmonds, N. E. (1986). *Central Issues in Jurisprudence*. (pp. 77-86, 97-105) London: Sweet & Maxwell.

Theme: Law differs categorically from justice and morality in that it is a *formal* system with a specific decision-making procedure and a recognized authority that can settle all its controversial questions. This lecture analyses the most-influential *Hart-Dworkin debate* in legal philosophy to explain this formalistic character of law.

## **Week 2**

### **Tutorial 2A (Monday, November 3)**

Compulsory reading:

- Merryman, J.H., & Perez-Perdomo, R. (2007). *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*. (pp. 91-101) California: Stanford University Press.

Theme: This tutorial addresses some central distinctions in law, including civil law v. common law; public v. private law.

### **Lecture 2A (Wednesday, November 5) Guest lecture Dr. Gijs van Donselaar (Department of Philosophy, UvA)**

Compulsory reading:

- Sandel, M. J. (2009). *Justice: What is the Right Thing to Do?* (Chapter 2) London: Penguin Books

Theme: Utilitarianism

### **Tutorial 2B (Thursday, November 6)**

Compulsory reading:

- Singer, P. (1972). "Famine, Affluence, and Morality." *Philosophy and Public Affairs* 1 (3): 229-243.

Theme: A utilitarian defense of global justice.

### **Lecture 2B (Friday, November 7)**

Compulsory reading:

- Mill, J. S. (1859). *On Liberty*, chapter I-III, excerpts.

Theme: John Stewart Mill developed a utilitarian theory of liberty. This lecture will analyze Mill's *On Liberty*, and focuses on two elements in particular: his 'harm-principle' that explicitly limits law and state intervention and Mill's elaboration of the harm-principle into a defense of freedom of speech.

## **Week 3**

### **Tutorial 3A (Monday, November 10)**

Compulsory Reading:

- *Snyder v Phelps*, 131 S. Ct. 1207 (2011) United States Supreme Court
  - Opinion of the Court, as delivered by Chief Justice Roberts.
  - Dissenting opinion by Justice Alito.

Theme: Freedom of speech in practice.

### **Lecture 3A (Wednesday, November 12)**

Compulsory reading:

- Sandel, M. J. (2009). *Justice: What is the Right Thing to Do?* (Chapter 3) London: Penguin Books.

Theme: Libertarianism – determining the limits of government and law

### **Tutorial 3B (Thursday, November 13)**

Compulsory reading:

- Murphy, L., & Nagel, T. (2004). *The Myth of Ownership. Taxes and Justice*. (pp. 31-37) New York: Oxford University Press.

Theme: The limits of libertarianism and the cost of rights: Does liberty depend on taxes?

### **Lecture 3B (Friday, November 14)**

Compulsory reading:

- Sandel, M. J. (2009). *Justice: What is the Right Thing to Do?* (Chapter 4) London: Penguin Books

Theme: Markets and morals

## **Week 4**

### **Tutorial 4A (Monday, November 17)**

Compulsory reading:

- Sally, S. (2014, May 3). Why People Don't Donate their Kidneys, *New York Times*.
- *Matter of Baby M*, 525 A.2d 1128 (1987) (first instance decision) and *In re Baby M*, 537 A.2d 1227 (N.J. 1988) (appellate decision).

Theme: Markets and morals in practice – Limits of self-ownership and the commodification of non-market goods.

### **Lecture 4A (Wednesday, November 19) Guest Lecture Dr. Thomas Nys (Department of Philosophy, UvA)**

Compulsory reading:

- Sandel, M. J. (2009). *Justice: What is the Right Thing to Do?* (Chapter 5) London: Penguin Books.

Theme: Deontology and the intrinsic worth of human beings

#### **Tutorial 4B (Thursday, November 20)**

Compulsory reading: Will be distributed through BB.

Theme: Deontology in practice – discussing some thorny dilemmas.

#### **Lecture 4B (Friday, November 21)**

Compulsory reading:

- Pogge, T. (2011). “Are We Violating the Human Rights of the World’s Poor?” *Yale Human Rights & Development Law Journal*, 14 (2), pp.1-33.

Theme: A deontological – i.e. human rights based – defense of global justice.

### **Week 5**

#### **Tutorial 5A (Monday, November 24)**

Compulsory Reading:

- Pierik, R. (2014). Human Rights and the Regulation of Transnational Clinical Trials. *Political Studies*. DOI: 10.1111/1467-9248.12134

Theme: Comparing utilitarian and deontological defenses of global justice.

#### **Lecture 5A (Wednesday, November 26)**

Compulsory reading:

- Sandel, M. J. (2009). *Justice: What is the Right Thing to Do?* (Chapter 6) London: Penguin Books.

Theme: John Rawls’ liberal egalitarianism.

#### **Tutorial 5B (Thursday, November 27)**

Compulsory reading:

- Kerr, O. S. (2007) How to Read a Case, *The Green Bag*, 11(2), 51.
- Sunstein, C. R. (2014, September 5) Gay Marriage? ‘Go Figure’; Retrieved from <http://www.bloomberglaw.com>.
- *Baskin v Bogan*, \_\_\_ F.3d. \_\_\_, 2014 WL 4359050 (C.A.7 2014) – Posner decision.

Theme: Biting the egalitarian bullet? Marriage equality.

### **Lecture 5B (Friday, November 28)**

Compulsory reading:

- Sandel, M. J. (2009). *Justice: What is the Right Thing to Do?* (Chapter 7) London: Penguin Books.

Theme: Historic injustice and affirmative action.

## **Week 6**

### **Tutorial 6A (Monday, December 1)**

Compulsory reading:

- Dworkin, R. (1977). Why Bakke has no case. *New York Review of Books*, 24 (Nov 1977).

Theme: Affirmative action in practice: admission to university – including the PPLE program.

### **Lecture 6A (Wednesday, December 3) Guest Lecture Prof. Beate Roessler (Department of Philosophy, UvA)**

Compulsory reading:

- Sandel, M. J. (2009). *Justice: What is the Right Thing to Do?* (Chapter 8) London: Penguin Books.

Theme: Aristotle.

### **Tutorial 6B (Thursday, December 4)**

Compulsory reading:

- Sandel, M. J. (2009). *Justice: What is the Right Thing to Do?* (Chapter 9) London: Penguin Books.

Theme: Dilemmas of loyalty.

### **Lecture 6B (Friday, December 5)**

Compulsory reading:

- Kymlicka, W. (2007). Community and Multiculturalism. In R. E. Goodin, & P. Pettit, & T. Pogge (Eds.), *A Companion to Contemporary Political Philosophy* (2nd ed.) (pp. 463-478). Oxford: Blackwell.

Theme: Majority values and the rights of minorities – the case of Zwarte Piet.

## **Week 7**

### **Tutorial 7A (Monday, December 8)**

Compulsory reading:

- McIntosh, P. (1989 July-August) White Privilege: Unpacking the Invisible Knapsack. *Peace and Freedom Magazine*, pp. 10-12.

Theme: Awareness of privilege.

### Lecture 7A (Wednesday, December 10)

Compulsory reading:

- Joppke, C. (2013). A Christian identity for the liberal state?. *The British Journal of Sociology*, 64(4), 597-616.

Theme: State neutrality and biased historic alliances.

### Tutorial 7B (Thursday, December 11)

Compulsory reading:

- Pierik, R. (2012). State Neutrality and the Limits of Religious Symbolism. In J. Temperman (Ed.), *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom* (pp. 201-218). Leiden, Boston: BRILL/Martinus Nijhoff.
- Weiler, J. (2010). Lautsi: Crucifix in the Classroom Redux (Editorial). *The European Journal of International Law*, 21(1), 1–6.

Theme: State neutrality and historic alliances in practice – Do Crucifixes belong in classrooms of public schools?

### Lecture 7B (Friday, December 12)

Compulsory reading: none

Theme: *This is the end...* Wrapping up the course, a final attempt to connect the dots and prepare for the final exam and paper.

## 5. Assessment

### Examination Scheme

Component	Deadline	Weight	Minimum grade	Compensable	Resit
Short Essays (x3)*	Unknown	30%	NA	N/A	N/A
In-class presentation**	Flexible	10%	5,5	N/A	N/A
Final Exam***	Dec. 17	40%	5,5		Yes

**\*Short Essays** –Students will write a short thought paper each week in response to a question related to the readings and bring a copy of the essay in print to class. These assignments will be published at least two weeks ahead on BlackBoard. Three of these essays will be graded, but students will not be told in advance which of the weekly assignments these will be. Thus it is to your advantage to write each paper as if it is for a grade. All students will be graded on the same week's assignments. Grading will reflect the following components:

- Answer to the question presented
- Demonstrated knowledge of assigned readings
- Structure and clarity of answer

**\*\*In-Class Presentation** – Beginning in Week Two, two (or more) students will be assigned to prepare in-class summaries and discussions on the assigned readings and questions for the week. One student (the presenter) will open the Monday (Tutorial A) discussion with a presentation on the relevant topics and literature (~10min). The other (the discussant) will then give constructive feedback on the presentation and pose questions to the presenter (~5min). The rest of the class will then be able to ask questions and join the conversation. On Thursday (Tutorial B), the presenter and discussant will switch roles. Grading will reflect:

- Answer to the question presented
- Demonstrated knowledge of the assigned readings, including connections between the readings and to larger themes of the course
- Creativity and effectiveness of overall presentation

**\*\*\* Final Exam** – Wednesday December 17, 18.00-22.00h, OMHP D108. This exam consists of two parts. The first part is a closed book exam focusing on the readings in the course. You will be required to provide concise answers to direct questions over the required reading materials. The second part of the exam focuses on longer essay questions. This part of the exam is open book.

In order to complete the course, the total average should be 5.5 or higher.

### 3. Attendance

The bachelor PPLE requires that all students be present in class. More than 10% absence can result in receiving no credit for the module. For the benefit of everyone in the classroom, all classes will start punctually at the scheduled time. Students who are late might find a closed door. Being late twice will be noted as missing one tutorial.

### 5. Fraud and Plagiarism

This course uses the 'Regulations Governing Fraud and Plagiarism for UvA Students'. For more information, see <http://www.student.uva.nl/preventfraud-plagiarism>

### 6. More information

This course has a Blackboard website. Here you can find the necessary information like the group information of your tutorials, the assignments. Look at this website regularly.

You are registered for this course via SIS. This means that you are automatically registered for exams that are part of this course. For more information about SIS visit: [www.student.uva.nl/sis](http://www.student.uva.nl/sis) .